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code of federal regulations

Banks and Banking

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PARTS 200 TO 299

Revised as of January 1, 1986

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Banks and Banking

12

PARTS 200 TO 299

Revised as of January 1, 1986

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READEX FICHE

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	**as of January 1**
Title 17 through Title 27	**as of April 1**
Title 28 through Title 41	**as of July 1**
Title 42 through Title 50	**as of October 1**

The appropriate revision date is printed on the cover of each volume.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

January 2, 1986

THIS TITLE

Title 12—BANKS AND BANKING is composed of four volumes. The parts in these volumes are arranged in the following order: Parts 1-199, 200-299, 300-499, and 500-End. The first volume contains Parts 1-199, the current regulations issued by the Comptroller of the Currency (Department of the Treasury). The second volume contains Parts 200-299, the current regulations issued by the Federal Reserve System. The third volume contains Parts 300-499, the current regulations issued by the Federal Deposit Insurance Corporation and the Export-Import Bank of the United States. The fourth volume contains Part 500 to End, the current regulations issued by the Federal Home Loan Bank Board, the Farm Credit Administration, the National Credit Union Administration, the Federal Financing Bank, the Federal Financial Institutions Examination Council, and the Depository Institutions Deregulation Committee. The contents of these volumes represent all of the current regulations codified under this title of the CFR as of January 1, 1986.

For this volume Doris M. O'Keefe was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development: See Housing and Urban Development, 24 CFR, Chapter II.

Fiscal Service: See Money and Finance: Treasury, 31 CFR, Chapter II.

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SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

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201.2 Definitions.
201.3 Availability and terms.
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INTERPRETATIONS

201.104 Eligibility of consumer loans and finance company paper.
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201.108 Obligations eligible as collateral for advances.
201.109 Eligibility for discount of mortgage company notes.
201.110 Goods held by persons employed by owner.

AUTHORITY: Secs. 10(a), 10(b), 13, 13a, and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 374, 374a, and 461); sec. 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d), unless otherwise noted.

SOURCE: 45 FR 54010, Aug. 14, 1980, unless otherwise noted.

§ 201.1 Authority, scope and purpose.

(a) *Authority and scope.* This part is issued under the authority of sections 10(a), 10(b), 13, 13a, and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 374, 374a, and 461), other provisions of the Federal Reserve Act, and section 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d) and relates to extensions of credit by Reserve Banks to depository institutions and others. Except as may be otherwise provided, this part shall be applicable to United States branches and agencies of foreign banks subject to reserve requirements under Regulations D (12 CFR Part 204) in the same manner and to the same extent as member banks.

(b) *Purpose.* This part establishes rules under which Federal Reserve Banks may extend credit to depository institutions and others. Extending credit to depository institutions to accommodate commerce, industry, and agriculture is a principal function of Reserve Banks. While open market operations are the primary means of affecting the overall supply of reserves, the lending function of the Reserve Banks is an effective method of supplying reserves to meet the particular credit needs of individual depository institutions. The lending functions of the Federal Reserve System are conducted with due regard to the basic objectives of monetary policy and the maintenance of a sound and orderly financial system. These basic objectives are promoted by influencing the overall volume and cost of credit through actions that affect the volume and cost of reserves to depository institutions. Borrowing by individual depository institutions, at a rate of interest that is adjusted from time to time in accordance with prevailing economic and money market conditions, has a direct impact on the reserve positions of the borrowing institutions and thus on their ability to meet the credit needs of their customers. However, the effects of such borrowing do not remain localized but have an important bearing on overall monetary and credit conditions.

§ 201.2 Definitions.

For purpose of this part, the following definitions shall apply:

(a)(1) *"Depository institution"* means an institution that maintains reservable transaction accounts or nonpersonal time deposits and is:

(i) An insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or a bank that is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(ii) A savings bank or mutual savings bank as defined in section 3 of the

Federal Deposit Insurance Act (12 U.S.C. 1813(f), (g));

(iii) An insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)) or a credit union that is eligible to apply to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(iv) A member as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(4)); or

(v) An insured institution as defined in section 401 of the National Housing Act (12 U.S.C. 1724(a)) or an institution that is eligible to apply to become an insured institution under section 403 of such Act (12 U.S.C. 1726).

(2) A financial institution that is not required to maintain reserves under Part 204 of this title (Regulation D) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public is not a depository institution.

(b) *"Transaction account and nonpersonal time deposits"* have the meanings specified in Part 204 of this title (Regulation D).

§ 201.3 Availability and terms.

(a) *Short-term adjustment credit.* Federal Reserve credit is available on a short-term basis to a depository institution under such rules as may be prescribed to assist the institution, to the extent appropriate, in meeting temporary requirements for funds, or to cushion more persistent outflows of funds pending an orderly adjustment of the institution's assets and liabilities. Such credit generally is available only after reasonable alternative sources of funds, including credit from special industry lenders, such as Federal Home Loan Banks, the National Credit Union Administration's Central Liquidity Facility, and corporate central credit unions have been fully used. Under certain circumstances, a surcharge may be imposed above the basic rate of interest normally charged by Reserve Banks.

(b) *Extended credit*—(1) *Seasonal credit.* Federal Reserve credit is available for periods longer than those permitted under adjustment credit to assist smaller depository institutions in meeting regular needs for funds arising from a combination of expected patterns of movement in their deposits and loans. Seasonal credit is available only if similar assistance is not available from other special industry lenders. Seasonal credit will ordinarily be limited to the amount by which the depository institution's seasonal needs exceed certain percentages, established by the Board of Governors, of the institution's average total deposits in the preceding calendar year. Such credit will be available if the Reserve Bank is satisfied that the institution's qualifying need for funds is seasonal and will persist for at least four weeks. Need for credit at depository institutions will also be given consideration when institutions are experiencing unusual seasonal demands for credit in a period of liquidity strain. To the extent practicable, a depository institution should arrange in advance for seasonal credit for the full period during which such credit is expected to be required. Under certain circumstances, a surcharge may be imposed above the basic rate of interest normally charged by Reserve Banks.

(2) *Other extended credit.* Federal Reserve credit is available to depository institutions under extended credit arrangements where similar assistance is not reasonably available from other sources, including special industry lenders. Such credit may be provided where there are exceptional circumstances or practices involving only a particular depository institution. Exceptional circumstances would include situations where an individual depository institution is experiencing financial strains arising from particular circumstances or practices affecting that institution—including sustained deposit drains, impaired access to money market funds, or sudden deterioration in loan repayment performance. Extended credit may also be provided to accommodate the needs of depository institutions, including those with longer term asset portfolios, that may be experiencing difficulties adjusting to changing money market conditions over a longer period, particularly at times of deposit disintermediation. A

special rate or rates above the basic discount rate established by the Reserve Banks, subject to review and determination by the Board of Governors, may be applied to other extended credit.

(c) *Emergency credit for others.* In unusual and exigent circumstances, a Reserve Bank may, after consultation with the Board, advance credit to individuals, partnerships, and corporations that are not depository institutions if, in the judgment of the Reserve Bank, credit is not available from other sources and failure to obtain such credit would adversely affect the economy. The rate applicable to such credit will be above the highest rate for advances in effect for depository institutions. Where the collateral used to secure such credit consists of assets other than obligations of, or fully guaranteed as to principal and interest by, the United States or an agency thereof, an affirmative vote of five or more Board members is required before credit may be extended.

§ 201.4 Advances and discounts.

(a) Reserve Banks may lend to depository institutions either through advances secured by acceptable collateral or through the discount of certain types of paper. Credit extended by the Federal Reserve generally takes the form of an advance.

(b) Reserve Banks may make advances to any depository institution if secured to the satisfaction of the Reserve Bank. Satisfactory collateral generally includes United States government and Federal agency securities, and, if of acceptable quality, mortgage notes covering 1-4 family residences, State and local government securities, and business, consumer and other customer notes.

(c) If a Reserve Bank concludes that a depository institution will be better accommodated by the discount of paper than by an advance, it may discount any paper endorsed by the depository institution that meets the requirements specified in the Federal Reserve Act.

§ 201.5 General requirements.

(a) *Credit for capital purposes.* Federal Reserve credit is not a substitute for capital.

(b) *Compliance with law and regulation.* All credit extended under this part shall comply with applicable requirements of law and of this part. Each Reserve Bank (1) shall keep itself informed of the general character and amount of the loans and investments of depository institutions with a view of ascertaining whether undue use is being made of credit for the speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions, and (2) shall consider such information in determining whether to extend credit.

(c) *Information.* A Reserve Bank shall require such information as it believes appropriate or desirable to insure that paper tendered as collateral for advances or for discount is acceptable and that the credit provided is used in a manner consistent with this part.

(d) *Indirect credit for others.* Except with the permission of the Board of Governors, no depository institution shall act as the medium or agent of another depository institution in receiving Federal Reserve credit.

§ 201.6 Federal Intermediate Credit Banks.

A Reserve Bank may discount for any Federal Intermediate Credit bank (1) agricultural paper, or (2) notes payable to and bearing the endorsement of the Federal Intermediate Credit Bank that cover loans or advances made under subsections (a) and (b) of section 2.3 of the Farm Credit Act of 1971 (12 U.S.C. 2074) and that are secured by paper eligible for discount by Reserve Banks. Any paper so discounted shall have a period remaining to maturity at the time of discount of not more than nine months.

§ 201.51 Short-term adjustment credit for depository institutions.

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	7.5	May 20, 1985.
New York	7.5	May 20, 1985.
Philadelphia	7.5	May 24, 1985.
Cleveland	7.5	May 21, 1985.
Richmond	7.5	May 20, 1985.
Atlanta	7.5	May 20, 1985.
Chicago	7.5	May 20, 1985.
St. Louis	7.5	May 21, 1985.
Minneapolis	7.5	May 20, 1985.
Kansas City	7.5	May 20, 1985.
Dallas	7.5	May 20, 1985.
San Francisco	7.5	May 21, 1985.

[50 FR 23395, June 4, 1985]

§ 201.52 Extended credit to depository institutions.

(a) The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	8	May 20, 1985.
New York	8	May 20, 1985.
Philadelphia	8	May 24, 1985.
Cleveland	8	May 21, 1985.
Richmond	8	May 20, 1985.
Atlanta	8	May 20, 1985.
Chicago	8	May 20, 1985.
St. Louis	8	May 21, 1985.
Minneapolis	8	May 20, 1985.
Kansas City	8	May 20, 1985.
Dallas	8	May 20, 1985.
San Francisco	8	May 21, 1985.

(b) The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	7.5	May 20, 1985.
New York	7.5	May 20, 1985.
Philadelphia	7.5	May 24, 1985.
Cleveland	7.5	May 21, 1985.
Richmond	7.5	May 20, 1985.
Atlanta	7.5	May 20, 1985.
Chicago	7.5	May 20, 1985.
St. Louis	7.5	May 21, 1985.
Minneapolis	7.5	May 20, 1985.
Kansas City	7.5	May 20, 1985.
Dallas	7.5	May 20, 1985.
San Francisco	7.5	May 21, 1985.

NOTE.—These rates apply for the first 60 days of borrowing. A 1 percent surcharge applies for borrowing during the next 90 days, and a 2 percent surcharge applies for borrowing thereafter. Where credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period, the time period in which each rate under the structure is applied may be shortened, and the rate may be established on a more flexible basis, taking into account rates on market sources of funds.

[50 FR 23395, June 4, 1985]

§ 201.53 Emergency credit for other than depository institutions.

The rates for emergency credit to individuals, partnerships, or corporations other than depository institutions under § 201.3(c) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	17	May 5, 1981.
New York	17	Do.
Philadelphia	17	Do.
Cleveland	17	Do.
Richmond	17	Do.
Atlanta	17	Do.
Chicago	17	May 8, 1981.
St. Louis	17	May 5, 1981.
Minneapolis	17	Do.
Kansas City	17	Do.
Dallas	17	Do.
San Francisco	17	Do.

(12 U.S.C. 248(i). Interprets or applies 12 U.S.C. 357)

[46 FR 27090, May 18, 1981]

INTERPRETATIONS

§ 201.104 Eligibility of consumer loans and finance company paper.

(a) The Board of Governors has clarified and modified its position with respect to the eligibility of consumer loans and finance company paper for discount with and as collateral for advances by the reserve banks.

(b) Section 13, paragraph 2, of the Federal Reserve Act authorizes a Federal Reserve Bank, under certain conditions, to discount for member banks "* * * notes, drafts, and bills of exchange arising out of actual commercial transactions; that is, notes, drafts, and bills of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used, or are to be used, for such purposes, the Board of Governors of the Federal Reserve System to have the right to determine or define the character of the paper thus eligible for discount, within the meaning of this Act."

(c) It continues to be the opinion of the Board that borrowing for the purpose of purchasing goods is borrowing for a commercial purpose, whether the borrower intends to use the goods himself or to resell them. Hence, loans made to enable consumers to purchase automobiles or other goods should be included under commercial, agricultural, and industrial paper within the meaning of the Federal Reserve Act, and as such are eligible for discounting with the Reserve Banks and as security for advances from the Reserve Banks under section 13, paragraph 8, of the Federal Reserve Act as long as they conform to requirements with respect to maturity and other matters. This applies equally to loans made directly by banks to consumers and to paper accepted by banks from dealers or finance companies. It also applies to notes of finance companies themselves as long as the proceeds of such notes are used to finance the purchase of consumer goods or for other purposes which are eligible within the meaning of the Federal Reserve Act.

(d) If there is any question as to whether the proceeds of a note of a finance company have been or are to be used for a commercial, agricultural, or industrial purpose, a financial statement of the finance company reflecting an excess of notes receivable which appear eligible for rediscount (without regard to maturity) over total current liabilities (i.e., notes due within 1 year) may be taken as an indication of eligibility. Where information is lacking as to whether direct consumer loans by a finance company are for eligible purposes, it may be assumed that 50 percent of such loans are "notes receivable which appear eligible for rediscount". In addition, that language should be regarded as including notes given for the purchase of mobile homes that are acquired by a finance company from a dealer-seller of such homes.

(e) The principles stated above apply not only to notes of a finance company engaged in making consumer loans but also to notes of a finance company engaged in making loans for other eligible purposes, including business and agricultural loans. Under section 13a of the Federal Reserve Act, paper representing loans to finance the production, marketing, and carrying of agricultural products or the breeding, raising, fattening, or marketing of livestock is eligible for discount if the paper has a maturity of not exceeding 9 months. Consequently, a note of a finance company the proceeds of which are used by it to make loans for such purposes is eligible for discount or as security for a Federal Reserve advance, and such a note, unlike the note of a finance company making consumer loans, may have a maturity of up to 9 months.

[37 FR 4701, Mar. 4, 1972]

§ 201.107 Eligibility of demand paper for discount and as security for advances by Reserve Banks.

(a) The Board of Governors has reconsidered a ruling made in 1917 that demand notes are ineligible for discount under the provisions of the Federal Reserve Act. (1917 Federal Reserve Bulletin 378.)

(b) The basis of that ruling was the provision in the second paragraph of section 13 of the Federal Reserve Act that notes, drafts, and bills of exchange must have a maturity at the time of discount of not more than 90 days, exclusive of grace. The ruling stated that "a demand note or bill is not eligible under the provisions of the act, since it is not in terms payable within the prescribed 90 days, but, at the option of the holder, may not be presented for payment until after that time."

(c) It is well settled as a matter of law, however, that demand paper is due and payable on the date of its issue. The generally accepted legal view is stated in Beutel's Brannan on Negotiable Instruments Law, at page 305, as follows:

> The words "on demand" serve the same purpose as words making instruments payable at a specified time. They fix maturity

of the obligation and do not make demand necessary, but mean that the instrument is due, payable and matured when made and delivered.

(d) Accordingly, the Board has concluded that, since demand paper is due and payable on the date of its issue, it satisfies the maturity requirements of the statute. Demand paper which otherwise meets the eligibility requirements of the Federal Reserve Act and this part Regulation A, therefore, is eligible for discount and as security for advances by Reserve Banks.

[31 FR 5443, Apr. 16, 1966]

§ 201.108 Obligations eligible as collateral for advances.

(a) Section 3(a) of Pub. L. 90-505, approved September 21, 1968, amended the eighth paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 347) to authorize advances thereunder to member banks "secured by such obligations as are eligible for purchase under section 14(b) of this Act." The relevant part of such paragraph had previously referred only to "notes * * * eligible * * * for purchase", which the Board had construed as not including obligations generally regarded as securities. (See 1962 Federal Reserve Bulletin 690, § 201.103(d).)

(b) Under section 14(b) direct obligations of, and obligations fully guaranteed as to principal and interest by, the United States are eligible for purchase by Reserve Banks. Such obligations include certificates issued by the trustees of Penn Central Transportation Co. that are fully guaranteed by the Secretary of Transportation. Under section 14(b) direct obligations of, and obligations fully guaranteed as to principal and interest by, any agency of the United States are also eligible for purchase by Reserve Banks. Following are the principal agency obligations eligible as collateral for advances:

(1) Federal Intermediate Credit Bank debentures;

(2) Federal Home Loan Bank notes and bonds;

(3) Federal Land Bank bonds;

(4) Bank for Cooperative debentures;

(5) Federal National Mortgage Association notes, debentures and guaranteed certificates of participation;

(6) Obligations of or fully guaranteed by the Government National Mortgage Association;

(7) Merchant Marine bonds;

(8) Export-Import Bank notes and guaranteed participation certificates;

(9) Farmers Home Administration insured notes;

(10) Notes fully guaranteed as to principal and interest by the Small Business Administration;

(11) Federal Housing Administration debentures;

(12) District of Columbia Armory Board bonds;

(13) Tennessee Valley Authority bonds and notes;

(14) Bonds and notes of local urban renewal or public housing agencies fully supported as to principal and interest by the full faith and credit of the United States pursuant to section 302 of the Housing Act of 1961 (42 U.S.C. 1421a(c), 1452(c)).

(15) Commodity Credit Corporation certificates of interest in a price-support loan pool.

(16) Federal Home Loan Mortgage Corporation notes, debentures, and guaranteed certificates of participation.

(17) U.S. Postal Service obligations.

(18) Participation certificates evidencing undivided interests in purchase contracts entered into by the General Services Administration.

(19) Obligations entered into by the Secretary of Health, Education, and Welfare under the Public Health Service Act, as amended by the Medical Facilities Construction and Modernization Amendments of 1970.

(20) Obligations guaranteed by the Overseas Private Investment Corp., pursuant to the provisions of the Foreign Assistance Act of 1961, as amended.

(c) Nothing less than a full guarantee of principal and interest by a Federal agency will make an obligation eligible. For example, mortgage loans insured by the Federal Housing Administration are not eligible since the insurance contract is not equivalent to an unconditional guarantee and does not fully cover interest payable on the loan. Obligations of international institutions, such as the Inter-American Development Bank and the International Bank for Reconstruction and Development, are also not eligible, since such institutions are not agencies of the United States.

(d) Also eligible for purchase under section 14(b) are "bills, notes, revenue bonds, and warrants with a maturity from date of purchase of not exceeding 6 months, issued in anticipation of the collection of taxes or in anticipation of the receipt of assured revenues by any State, county, district, political subdivision, or municipality in the continental United States, including irrigation, drainage and reclamation districts."[1] In determining the eligibility of such obligations as collateral for advances, but the Reserve Bank will satisfy itself that sufficient tax or other assured revenues earmarked for payment of such obligations will be available for that purpose at maturity, or within 6 months from the date of the advance if no maturity is stated. Payments due from Federal, State or other governmental units may, in the Reserve Bank's discretion, be regarded as "other assured revenues"; but neither the proceeds of a prospective issue of securities nor future tolls, rents or similar collections for the voluntary use of government property for non-governmental purposes will normally be so regarded. Obligations with original maturities exceeding 1 year would not ordinarily be self-liquidating as contemplated by the statute, unless at the time of issue provision is made for a redemption or sinking fund that will be sufficient to pay such obligations at maturity.

[Reg. A, 33 FR 17231, Nov. 21, 1968, as amended at 34 FR 1113, Jan. 24, 1969; 34 FR 6417, Apr. 12, 1969; 36 FR 8441, May 6, 1971; 37 FR 24105, Nov. 14, 1972; 43 FR 53709, Nov. 17, 1978]

§ 201.109 Eligibility for discount of mortgage company notes.

(a) The question has arisen whether notes issued by mortgage banking companies to finance their acquisition and temporary holding of real estate mortgages are eligible for discount by Reserve Banks.

(b) Under section 13 of the Federal Reserve Act the Board has authority to define what are "agricultural, industrial, or commercial purposes", which is the statutory criterion for determining the eligibility of notes and drafts for discount. However, such definition may not include paper "covering merely investments or issued or drawn for the purpose of carrying or trading in stocks, bonds, or other investment securities".

(c) The legislative history of section 13 suggests that Congress intended to make eligible for discount "any paper drawn for a legitimate business purpose of any kind"[1a] and that the Board, in determining what paper is eligible, should place a "broad and adaptable construction"[2] upon the terms in section 13. It may also be noted that Congress apparently considered paper issued to carry investment securities as paper issued for a "commercial purpose", since it specifically prohibited the Board from making such paper eligible for discount. If "commercial" is broad enough to encompass investment banking, it would also seem to include mortgage banking.

(d) In providing for the discount of commercial paper by Reserve Banks, Congress obviously intended to facilitate the current financing of agriculture, industry, and commerce, as opposed to long-term investment.[3] In the main, trading in stocks and bonds is investment-oriented; most securities transactions do not directly affect the production or distribution of goods and services. Mortgage banking, on the other hand, is essential to the construction industry and thus more closely related to industry and commerce. Although investment bankers also perform similar functions with respect to newly issued securities, Congress saw fit to deny eligibility to all paper issued to finance the carrying of securities. Congress did not distinguish between newly issued and outstanding securities, perhaps covering the larger area in order to make certain that the area of principal concern (i.e., trading in outstanding stocks and bonds) was fully included. Speculation was also a major Congressional concern, but speculation is not a material element in mortgage banking operations. Mortgage loans would not therefore seem to be within the purpose underlying the exclusions from eligibility in section 13.

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[1] Paragraph 3 of section 1 of the Federal Reserve Act (12 U.S.C. 221) defines "the continental United States" to mean "the States of the United States and the District of Columbia", thus including Alaska and Hawaii.

[1a] House Report No. 69, 63d Cong., p. 48.

[2] 50 Cong. Rec. 4675 (1913) (remarks of Rep. Phelan).

[3] 50 Cong. Rec. 5021 (1913) (remarks of Rep. Thompson of Oklahoma); 50 Cong. Rec. 4731-32 (1913) (remarks of Rep. Borland).

(e) Section 201.3(a) provides that a negotiable note maturing in 90 days or less is not eligible for discount if the proceeds are used "for permanent or fixed investments of any kind, such as land, buildings or machinery, or for any other fixed capital purpose". However, the proceeds of a mortgage company's commercial paper are not used by it for any permanent or fixed capital purpose, but only to carry temporarily an inventory of mortgage loans pending their "packaging" for sale to permanent investors that are usually recurrent customers.

(f) In view of the foregoing considerations the Board concluded that notes issued to finance such temporary "warehousing" of real estate mortgage loans are notes issued for an industrial or commercial purpose, that such mortgage loans do not constitute "investment securities", as that term is used in section 13, and that the temporary holding of such mortgages in these circumstances is not a permanent investment by the mortgage banking company. Accordingly, the Board held that notes having not more than 90 days to run which are issued to finance the temporary holding of mortgage loans are eligible for discount by Reserve Banks.

[35 FR 527, Jan. 15, 1970]

§ 201.110 Goods held by persons employed by owner.

(a) The Board has been asked to review an Interpretation it issued in 1933 concerning the eligibility for rediscount by a Federal Reserve Bank of bankers' acceptances issued against field warehouse receipts where the custodian of the goods is a present or former employee of the borrower. [¶ 1445 Published Interpretations, 1933 BULLETIN 188] The Board determined at that time that the acceptances were not eligible because such receipts do not comply with the requirement of section 13 of the Federal Reserve Act that a banker's acceptance be "secured at the time of acceptance by a warehouse receipt or other such document *conveying or securing title* covering readily marketable staples," nor with the requirement of section XI of the Board's Regulation A that it be "secured at the time of acceptance by a warehouse, terminal, or other similar receipt, conveying security title to such staples, *issued by a party independent of the customer.*"

The requirement that the receipt be "issued by a party independent of the customer" was deleted from Regulation A in 1973, and thus the primary issue for the Board's consideration is whether a field warehouse receipt is a document "securing title" to readily marketable staples.

(b) While bankers' acceptances secured by field warehouse receipts are rarely offered for rediscount or as collateral for an advance, the issue of "eligibility" is still significant. If an ineligible acceptance is discounted and then sold by a member bank, the proceeds are deemed to be "deposits" under § 204.1(f) of Regulation D and are subject to reserve requirements.

(c) In reviewing this matter, the Board has taken into consideration the changes that have occurred in commercial law and practice since 1933. Modern commercial law, embodied in the Uniform Commercial Code, refers to "perfecting security interests" rather than "securing title" to goods. The Board believes that if, under State law, the issuance of a field warehouse receipt provides the lender with a perfected security interest in the goods, the receipt should be regarded as a document "securing title" to goods for the purposes of section 13 of the Federal Reserve Act. It should be noted, however, that the mere existence of a perfected security interest alone is not sufficient; the Act requires that the acceptance be secured by a warehouse receipt or its equivalent.

(d) Under the U.C.C., evidence of an agreement between the secured party and the debtor must exist before a security interest can attach. [U.C.C. section 9-202.] This agreement may be evidence by: (1) A written security agreement signed by the debtor, or (2) the collateral being placed in the possession of the secured party or his agent [U.C.C. section 9-203]. Generally, a security interest is perfected by the filing of a financing statement. [U.C.C. section 9-302.] However, if the collateral is in the possession of a bailee, then perfection can be achieved by:

(1) Having warehouse receipts issued in the name of the secured party; (2) notifying the bailee of the secured party's interest; or (3) having a financing statement filed. [U.C.C. section 9-304(3).]

(e) If the field warehousing operation is properly conducted, a security interest in the goods is perfected when a warehouse receipt is issued in the name of the secured party (the lending bank). Therefore, warehouse receipts issued pursuant to a bona fide field warehousing operation satisfy the legal requirements of section 13 of the Federal Reserve Act. Moreover, in a properly conducted field warehousing operation, the warehouse manager will be trained, bonded, supervised and audited by the field warehousing company. This procedure tends to insure that he will not be impermissibly controlled by his former (or sometimes present) employer, the borrower, even though he may look to the borrower for reemployment at some future time. A prudent lender will, of course, carefully review the field warehousing operation to ensure that stated procedures are satisfactory and that they are actually being followed. The lender may also wish to review the field warehousing company's fidelity bonds and legal liability insurance policies to ensure that they provide satisfactory protection to the lender.

(f) If the warehousing operation is not conducted properly, however, and the manager remains under the control of the borrower, the security interest may be lost. Consequently, the lender may wish to require a written security agreement and the filing of a financing statement to insure that the lender will have a perfected security interest even if it is later determined that the field warehousing operation was not properly conducted. It should be noted however, that the Federal Reserve Act clearly requires that the bankers' acceptance be secured by a warehouse receipt in order to satisfy the requirements of eligibility, and a written security agreement and a filed financing statement, while desirable, cannot serve as a substitute for a warehouse receipt.

(g) This Interpretation is based on facts that have been presented in regard to field warehousing operations conducted by established, professional field warehouse companies, and it does not necessarily apply to all field warehousing operations. Thus ¶ 1430 and ¶ 1440 of the Published Interpretations [1918 BULLETIN 31 and 1918 BULLETIN 862] maintain their validity with regard to corporations formed for the purpose of conducting limited field warehousing operations. Furthermore, the prohibition contained in ¶ 1435 Published Interpretations [1918 BULLETIN 634] that "the borrower shall not have access to the premises and shall exercise no control over the goods stored" retains its validity, except that access for inspection purposes is still permitted under ¶ 1450 [1926 BULLETIN 666]. The purpose for the acceptance transaction must be proper and cannot be for speculation [¶ 1400, 1919 BULLETIN 858] or for the purpose of furnishing working capital [¶ 1405, 1922 BULLETIN 52].

(h) This interpretation suspersedes only the previous ¶ 1445 of the Published Interpretations [1933 BULLETIN 188], and is not intended to affect any other Board Interpretation regarding field warehousing.

(12 U.S.C. 342 et seq.)

[43 FR 21434, May 18, 1978]

PART 202—EQUAL CREDIT OPPORTUNITY

Sec.

REGULATION B (EQUAL CREDIT OPPORTUNITY)

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AUTHORITY: 15 U.S.C. 1691 et seq.

SOURCE: Reg. B, 50 FR 48026, Nov. 20, 1985, unless otherwise noted.

EFFECTIVE DATE NOTE: Effective December 16, 1985, but creditors have the option of continuing to comply with Part 202a until October 1, 1986.

Regulation B (Equal Credit Opportunity)

§ 202.1 Authority, scope and purpose.

(a) *Authority and scope.* This regulation is issued by the Board of Governors of the Federal Reserve System pursuant to title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 USC 1601 et seq.). Except as otherwise provided herein, the regulation applies to all persons who are creditors, as defined in § 202.2(l). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 USC 3501 et seq. and have been assigned OMB No. 7100-0201.

(b) *Purpose.* The purpose of this regulation is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors. The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; and to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans.

§ 202.2 Definitions.

For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply.

(a) *Account* means an extension of credit. When employed in relation to an account, the word *use* refers only to open-end credit.

(b) *Act* means the Equal Credit Opportunity Act (title VII of the Consumer Credit Protection Act).

(c) *Adverse action.* (1) The term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of the creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant.

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that accounnt;

(iii) A refusal or failure to authorize an account transaction at a point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2).

(d) *Age* refers only to the age of natural persons and means the number of fully elapsed years from the date of an applicant's birth.

(e) *Applicant* means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of § 202.7(d), the term includes guarantors, sureties, endorsers and similar parties.

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A *completed application* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

(g) *Board* means the Board of Governors of the Federal Reserve System.

(h) *Consumer credit* means credit extended to a natural person primarily for personal, family, or household purposes.

(i) *Contractually liable* means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) *Credit* means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) *Credit card* means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain money, property, or services on credit.

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of §§ 202.4 and 202.5(a), the term also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the act or this regulation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) *Credit transaction* means every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

(n) *Discriminate against an applicant* means to treat an applicant less favorably than other applicants.

(o) *Elderly* means age 62 or older.

(p) *Empirically derived and other credit scoring systems.*

(1) *A credit scoring system* is a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an *empirically derived, demonstrably and statistically sound, credit scoring system,* the system must be:

(i) Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants who applied for credit within a reasonable preceding period of time;

(ii) Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment);

(iii) Developed and validated using accepted statistical principles and methodology; and

(iv) Periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability.

(2) A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth in paragraph (p)(1) (i) through (iv) of this section; if the creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (p)(1) of this section, the system must be validated when sufficient credit experience becomes available. A system that fails this validity test is no longer an empirically derived, demonstrably and statistically sound, credit scoring system for that creditor.

(q) *Extend credit* and *extension of credit* mean the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity).

(r) *Good faith* means honesty in fact in the conduct or transaction.

(s) *Inadvertent error* means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors.

(t) *Judgmental system of evaluating applicants* means any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

(u) *Marital status* means the state of being unmarried, married, or separated, as defined by applicable state law. The term "unmarried" includes persons who are single, divorced, or widowed.

(v) *Negative factor or value,* in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

(w) *Open-end credit* means credit extended under a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.

(x) *Person* means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) *Pertinent element of creditworthiness*, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Board.

(aa) *State* means any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 202.3 Limited exceptions for certain classes of transactions.

(a) *Public utilities credit*—(1) *Definition.* Public utilities credit refers to extensions of credit that involve public utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.

(2) *Exceptions.* The following provisions of this regulation do not apply to public utilities credit:

(i) Section 202.5(d)(1) concerning information about marital status;

(ii) Section 202.10 relating to furnishing of credit information; and

(iii) Section 202.12(b) relating to record retention.

(b) *Securities credit*—(1) *Definition.* Securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(2) *Exceptions.* The following provisions of this regulation do not apply to securities credit:

(i) Section 202.5(c) concerning information about a spouse or former spouse;

(ii) Section 202.5(d)(1) concerning information about marital status;

(iii) Section 202.5(d)(3) concerning information about the sex of an applicant;

(iv) Section 202.7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(v) Section 202.7(c) relating to action concerning open-end accounts, but only to the extent the action taken is on the basis of a change of name or marital status;

(vi) Section 202.7(d) relating to the signature of a spouse or other person;

(vii) Section 202.10 relating to furnishing of credit information; and

(viii) Section 202.12(b) relating to record retention.

(c) *Incidental credit.* (1) *Definition.* Incidental credit refers to extensions of consumer credit other than credit of the types described in paragraphs (a) and (b) of this section:

(i) That are not made pursuant to the terms of a credit card account;

(ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 226.4); and

(iii) That are not payable by agreement in more than four installments.

(2) *Exceptions.* The following provisions of this regulation do not apply to incidental credit:

(i) Section 202.5(c) concerning information about a spouse or former spouse;

(ii) Section 202.5(d)(1) concerning information about marital status;

(iii) Section 202.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(iv) Section 202.5(d)(3) concerning information about the sex of an applicant, but only to the extent necessary for medical records or similar purposes;

(v) Section 202.7(d) relating to the signature of a spouse or other person;

(vi) Section 202.9 relating to notifications;

(vii) Section 202.10 relating to furnishing of credit information; and

(viii) Section 202.12(b) relating to record retention.

(d) *Business credit*—(1) *Definition.* Business credit refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in paragraphs (a) and (b) of this section.

(2) *Exceptions.* The following provisions of this regulation do not apply to business credit:

(i) Section 202.5(d)(1) concerning information about marital status; and

(ii) Section 202.10 relating to furnishing of credit information.

(3) *Modified requirements.* The following provisions of this regulation apply to business credit as specified below:

(i) Section 202.9 (a), (b), and (c) relating to notifications: the creditor shall notify the applicant, orally or in writing, of action taken or of incompleteness. When credit is denied or when other adverse action is taken, the creditor is required to provide a written statement of the reasons and the ECOA notice specified in section 202.9(b) if the applicant makes a written request for the reasons within 30 days of that notification; and

(ii) Section 202.12(b) relating to record retention: the creditor shall retain records as provided in § 202.12(b) if the applicant, within 90 days after being notified of action taken or of incompleteness, requests in writing that records be retained.

(e) *Government credit*—(1) *Definition.* Government credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) *Applicability of regulation.* Except for section 202.4, the general rule prohibiting discrimination on a prohibited basis, the requirements of this regulation do not apply to government credit.

§ 202.4 General rule prohibiting discrimination.

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

§ 202.5 Rules concerning taking of applications.

(a) *Discouraging applications.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) *General rules concerning requests for information.* (1) Except as provided in paragraphs (c) and (d) of this section, a creditor may request any information in connection with an application.[1]

(2) *Required collection of information.* Notwithstanding paragraphs (c) and (d) of this section, a creditor shall request information for monitoring purposes as required by § 202.13 for credit secured by the applicant's dwelling. In addition, a creditor may obtain information required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar state official) to monitor or enforce compliance with the act, this regulation, or other federal or state statute or regulation.

(3) *Special purpose credit.* A creditor may obtain information that is otherwise restricted to determine eligibility

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[1] This paragraph does not limit or abrogate any federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

for a special purpose credit program, as provided in §§ 202.8 (c) and (d).

(c) *Information about a spouse or former spouse.* (1) Except as permitted in this paragraph, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) *Permissible inquiries.* A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph (c)(2)(v)) that may be requested about the applicant if:

(i) The spouse will be permitted to use the account;

(ii) The spouse will be contractually liable on the account;

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested;

(iv) The applicant resides in a community property state or property on which the applicant is relying as a basis for repayment of the credit requested is located in such a state; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) *Other accounts of the applicant.* A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which the account is carried. A creditor may also ask the names in which an applicant has previously received credit.

(d) *Other limitations on information requests*—(1) *Marital status.* If an applicant applies for individual unsecured credit, a creditor shall not inquire about the applicant's marital status unless the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested. If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms "married," "unmarried," and "separated." A creditor may explain that the category "unmarried" includes single, divorced, and widowed persons.

(2) *Disclosure about income from alimony, child support, or separate maintenance.* A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

(3) *Sex.* A creditor shall not inquire about the sex of an applicant. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form discloses that the designation of a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) *Childbearing, childrearing.* A creditor shall not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. A creditor may inquire about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(5) *Race, color, religion, national origin.* A creditor shall not inquire about the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire about an applicant's permanent residence and immigration status.

(e) *Written applications.* A creditor shall take written applications for the types of credit covered by § 202.13(a), but need not take written applications for other types of credit.

§ 202.6 Rules concerning evaluation of applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the act and this regulation, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis.[2]

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[2] The legislative history of the act indicates that the Congress intended an "effects

Continued

(b) *Specific rules concerning use of information.* (1) Except as provided in the act and this regulation, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.

(2) *Age, receipt of public assistance.* (i) Except as permitted in this paragraph (b)(2), a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending credit.

(3) *Childbearing, childrearing.* In evaluating creditworthiness, a creditor shall not use assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future.

(4) *Telephone listing.* A creditor shall not take into account whether there is a telephone listing in the name of an applicant for consumer credit, but may take into account whether there is a telephone in the applicant's residence.

(5) *Income.* A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit; a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, the creditor shall consider such payments as income to the extent that they are likely to be consistently made.

(6) *Credit history.* To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness a creditor shall consider:

(i) The credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information the applicant may present that tends to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) *Immigration status.* A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment.

(c) *State property laws.* A creditor's consideration or application of state property laws directly or indirectly affecting creditworthiness does not constitute unlawful discrimination for the purposes of the act or this regulation.

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test" concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.

§ 202.7 Rules concerning extensions of credit.

(a) *Individual accounts.* A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) *Designation of name.* A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) *Action concerning existing open-end accounts*—(1) *Limitations.* In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:

(i) Require a reapplication, except as provided in paragraph (c)(2) of this section;

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2) *Requiring reapplication.* A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

(d) *Signature of spouse or other person*—(1) *Rule for qualified applicant.* Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.

(2) *Unsecured credit.* If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.

(3) *Unsecured credit—community property states.* If a married applicant requests unsecured credit and resides in a community property state, or if the property upon which the applicant is relying is located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to community property.

(4) *Secured credit.* If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights or assign earnings.

(5) *Additional parties.* If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested, a creditor may request a cosigner, guarantor, or the like. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

(6) *Rights of additional parties.* A creditor shall not impose requirements

upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.

(e) *Insurance.* A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

§ 202.8 Special purpose credit programs.

(a) *Standards for programs.* Subject to the provisions of paragraph (b) of this section, the act and this regulation permit a creditor to extend special purpose credit to applicants who meet eligibility requirements under the following types of credit programs:

(1) Any credit assistance program expressly authorized by federal or state law for the benefit of an economically disadvantaged class of persons;

(2) Any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a for-profit organization or in which such an organization participates to meet special social needs, if:

(i) The program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) The program is established and administered to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) *Rules in other sections.* (1) *General applicability.* All of the provisions of this regulation apply to each of the special purpose credit programs described in paragraph (a) of this section unless modified by this section.

(2) *Common characteristics.* A program described in paragraph (a)(2) or (a)(3) of this section qualifies as a special purpose credit program only if it was established and is administered so as not to discriminate against an applicant on any prohibited basis; however, all program participants may be required to share one or more common characteristics (for example, race, national origin, or sex) so long as the program was not established and is not administered with the purpose of evading the requirements of the act or this regulation.

(c) *Special rule concerning requests and use of information.* If participants in a special purpose credit program described in paragraph (a) of this section are required to possess one or more common characteristics (for example, race, national origin, or sex) and if the program otherwise satisfies the requirements of paragraph (a) of this section, a creditor may request and consider information regarding the common characteristic(s) in determining the applicant's eligibility for the program.

(d) *Special rule in the case of financial need.* If financial need is one of the criteria under a special purpose program described in paragraph (a) of this section, the creditor may request and consider, in determining an applicant's eligibility for the program, information regarding the applicant's martial status; alimony, child support, and separate maintenance income; and the spouse's financial resources. In addition, a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if the signature is required by federal or state law.

§ 202.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons*—(1) *When notification is required.* A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;

(iii) 30 days after taking adverse action on an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

(2) *Content of notification when adverse action is taken.* A notification given to an applicant when adverse action is taken shall be in writing and shall contain: a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance with respect to the creditor; and either:

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

(b) *Form of ECOA notice and statement of specific reasons.*

(1) *ECOA notice.* To satisfy the disclosure requirements of paragraph (a)(2) of this section regarding section 701(a) of the Act, the creditor shall provide a notice that is substantially similar to the following:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A of this regulation).

(2) *Statement of specific reasons.* The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

(c) *Incomplete applications*—(1) *Notice alternatives.* Within 30 days after receiving application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:

(i) Of action taken, in accordance with paragraph (a) of this section; or

(ii) Of the incompleteness, in accordance with paragraph (c)(2) of this section.

(2) *Notice of incompleteness.* If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

(3) *Oral request for information.* At its option, a creditor may inform the applicant orally of the need for additional information; but if the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1) of this section.

(d) *Oral notifications by small-volume creditors.* The requirements of this section (including statements of specific reasons) are satisified by oral notifications in the case of any creditor that did not receive more than 150 applications during the preceding calendar year.

(e) *Withdrawal of approved application.* When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

(f) *Multiple applicants.* When an application involves more than one applicant, notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(g) *Applications submitted through a third party.* When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use any credit offered, each creditor taking adverse action must comply with this section, directly or through a third party. A notice given by a third party shall disclose the identify of each creditor on whose behalf the notice is given.

§ 202.10 Furnishing of credit information.

(a) *Designation of accounts.* A creditor tht furnishes credit information shall designate:

(1) Any new account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party); and

(2) Any existing account to reflect such participation, within 90 days after receiving a written request to do so from one of the spouses.

(b) *Routine reports to consumer reporting agency.* If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(c) *Reporting in response to inquiry.* If a creditor furnishes credit information in response to an inquiry concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

§ 202.11 Relation to state law.

(a) *Inconsistent state laws.* Except as otherwise provided in this section, this regulation alters, affects, or preempts only those state laws that are inconsistent with the act and this regulation and then only to the extent of the inconsistency. A state law is not inconsistent if it is more protective of an applicant.

(b) *Preempted provisions of state law.* (1) A state law is deemed to be inconsistent with the requirements of the Act and this regulation and less protective of an applicant within the meaning of section 705(f) of the Act to the extent that the law:

(i) Requires or permits a practice or act prohibited by the Act or this regulation;

(ii) Prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;

(iii) Prohibits inquiries or collection of data required to comply with the act or this regulation;

(iv) Prohibits asking or considering age in an empirically derived, demonstrably and statistically sound, credit scoring system to determine a pertinent element of creditworthiness, or to favor an elderly applicant; or

(v) Prohibits inquiries necessary to establish or administer as special purpose credit program as defined by § 202.8.

(2) A creditor, state, or other interested party may request the Board to determine whether a state law is in-

consistent with the requirements of the Act and this regulation.

(c) *Laws on finance charges, loan ceilings.* If married applicants voluntarily apply for and obtained individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or loan ceilings under any federal or state law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.

(d) *State and Federal laws not affected.* This section does not alter or annul any provision of state property laws, laws relating to the disposition of decedents' estates, or Federal or state banking regulations directed only toward insuring the solvency of financial institutions.

(e) *Exemption for state-regulated transactions.* (1) *Applications.* A state may apply to the Board for an exemption from the requirements of the Act and this regulation for any class of credit transactions within the state. The Board will grant such an exemption if the Board determines that:

(i) The class of credit transactions is subject to state law requirements substantially similar to the Act and this regulation or that applicants are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) *Liability and enforcement.* (i) No exemption will extend to the civil liability provisions of section 706 or the administrative enforcement provisions of section 704 of the Act.

(ii) After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by Federal law) will constitute the requirements of the Act and this regulation.

§ 202.12 Record retention.

(a) *Retention of prohibited information.* A creditor may retain in its files information that is prohibited by the Act or this regulation in evaluating applications, without violating the Act or this regulation, if the information was obtained:

(1) From any source prior to March 23, 1977;

(2) From consumer reporting agencies, an applicant, or others without the specific request of the creditor; or

(3) As required to monitor compliance with the Act and this regulation or other Federal or state statutes or regulations.

(b) *Preservation of records*—(1) *Applications.* For 25 months after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

(i) Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the Act and this regulation or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this regulation.

(2) *Existing accounts.* For 25 months after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

(i) Any written or recorded information concerning the adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the Act or this regulation.

(3) *Other applications.* For 25 months after the data that a creditor receives an application for which the creditor is not required to comply with the notification requirements of § 202.9 the creditor shall retain all written or recorded information in its

possession concerning the applicant, including any notation of action taken.

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information specified in this section beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the act or this regulation by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the act and this regulation, or if it has been served with notice of an action filed pursuant to section 706 of the Act and § 202.14 of this regulation. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

§ 202.13 Information for monitoring purposes.

(a) *Information to be requested.* A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application the following information regarding the applicant(s):

(1) Race or national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (Specify);

(2) Sex;

(3) Marital status, using the categories married, unmarried, and separated; and

(4) Age.

"Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

(b) *Obtaining of information.* Questions regarding race or national origin, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the race or national origin and sex of the applicant(s) on the basis of visual observation or surname.

(c) *Disclosure to applicant(s).* The creditor shall inform the applicant(s) that the information regarding race or national origin, sex, marital status, and age is being requested by the federal government for the purpose of monitoring compliance with federal statutes that prohibit creditors from discriminating against appliants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses note to provide the information, the creditor is required to note the race or national origin and sex on the basis of visual observation or surname.

(d) *Substitute monitoring program.* A monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in paragraphs (a), (b), and (c).

§ 202.14 Enforcement, penalties and liabilities.

(a) *Administrative enforcement.* (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this regulation regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), National Credit Union Administration, Interstate Commerce Commission, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, Small Business Administration, and Secretary of Transportation.

(2) Except to the extent that administrative enforcement is specifically assigned to other authorities, compli-

ance with the requirements imposed under the act and this regulation is enforced by the Federal Trade Commission.

(b) *Penalties and liabilities.* (1) Sections 706 (a) and (b) and 702(g) of the Act provide that any creditor that fails to comply with a requirement imposed by the Act or this regulation is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to sections 704 (b), (c), and (d) and 702(g) of the Act, violations of the Act or regulations also constitute violations of other Federal laws. Liability for punitive damages is restricted to nongovernmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief and section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) As provided in section 706(*f*), a civil action under the Act or this regulation may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation, or within one year after the commencement of an administrative enforcement proceeding or of a civil action brought by the Attorney General of the United States within two years after the alleged violation.

(3) Sections 706 (g) and (h) provide that, if an agency responsible for administrative enforcement is unable to obtain compliance with the Act or this regulation, it may refer the matter to the Attorney General of the United States. On referral, or whenever the Attorney General has reason to believe that one or more creditors are engaged in a pattern or practice in violation of the Act or this regulation, the Attorney General may bring a civil action.

(c) *Failure of compliance.* A creditor's failure to comply with §§ 202.6(b)(6), 202.9, 202.10, 202.12 or 202.13 is not a violation if it results from an inadvertent error. On discovering an error under §§ 202.9 and 202.10, the creditor shall correct it as soon as possible. If a creditor inadvertently obtains the monitoring information regarding the race or national origin and sex of the applicant in a dwelling-related transaction not overed by § 202.13, the creditor may act on and retain the application without violating the regulation.

APPENDIX A—FEDERAL ENFORCEMENT AGENCIES

The following list indicates the Federal agencies the enforce Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency.

National Banks

Comptroller of the Currency, Consumer Examinations Division, Washington, DC 20219.

State Member Banks

Federal Reserve Bank serving the district in which the state member bank is located.

Nonmember Insured Banks

Federal Deposit Insurance Corporation Regional Director for the region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (Except for Savings Banks Insured by FDIC)

The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions

Regional office of the National Credit Union Administration serving the area in which the federal credit union is located.

Air Carriers

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

Creditors Subject to Interstate Commerce Commission

Office of Proceedings, Interstate Commerce Commission, Washington, DC 20523.

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies

U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

Brokers and Dealers

Securities and Exchange Commission, Washington, DC 20549.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations

Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

Retailers, Finance Companies, and All Other Creditors Not Listed Above

FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

APPENDIX B—MODEL APPLICATION FORMS

This appendix contains five model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. The first sample form is intended for use in open-end, unsecured transactions; the second for closed-end, secured transactions; the third for closed-end transactions, whether unsecured or secured; the fourth in transactions involving community property or occurring in community property states; and the fifth in residential mortgage transactions. The appendix also contains a model disclosure for use in complying with § 202.13 for certain dwelling-related loans. All forms contained in this appendix are models; their use by creditors is optional.

The use or modification of these forms is governed by the following instructions. A creditor may change the forms: by asking for additional information not prohibited by § 202.5; by deleting any information request; or by rearranging the format without modifying the substance of the inquiries. In any of these three instances, however, the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries must be included in the appropriate places if the items to which they relate appear on the creditor's form.

If a creditor uses an appropriate Appendix B model form, or modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs (c) and (d) of § 202.5 of this regulation.

[Open end, unsecured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ **If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.**

☐ **If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.**

☐ **If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.**

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): .... **Birthdate:** / /
Present Street Address: .... **Years there:** ......
City: .... **State:** .... **Zip:** .... **Telephone:** ....
Social Security No.: .... **Driver's License No.:** ....
Previous Street Address: .... **Years there:** ......
City: .... **State:** .... **Zip:** ....
Present Employer: .... **Years there:** .... **Telephone:** ....
Position or title: .... **Name of supervisor:** ....
Employer's Address: ....
Previous Employer: .... **Years there:** ......
Previous Employer's Address: ....
Present net salary or commission: $ .... **per** .... **. No. Dependents:** .... **Ages:** ....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ .... **per** .... **. Source(s) of other income:** ....
....

Is any income listed in this Section likely to be reduced in the next two years?
☐ **Yes (Explain in detail on a separate sheet.) No** ☐

Have you ever received credit from us? .... **When?** .... **Office:** ....
Checking Account No.: .... **Institution and Branch:** ....
Savings Account No.: .... **Institution and Branch:** ....
Name of nearest relative not living with you: .... **Telephone:** ....
Relationship: .... **Address:** ....

SECTION B—INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): .... **Birthdate:** / /
Relationship to Applicant (if any): ....
Present Street Address: .... **Years there:** ......
City: .... **State:** .... **Zip:** .... **Telephone:** ....
Social Security No.: .... **Driver's License No.:** ....
Present Employer: .... **Years there:** .... **Telephone:** ....
Position or title: .... **Name of supervisor:** ....
Employer's Address: ....
Previous Employer: .... **Years there:** ......
Previous Employer's Address: ....
Present net salary or commission: $ .... **per** .... **. No. Dependents:** .... **Ages:** ....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ .... **per** .... **. Source(s) of other income:** ....
....

Is any income listed in this Section likely to be reduced in the next two years?
☐ **Yes (Explain in detail on a separate sheet.)** ☐ **No**

Checking Account No.: .... **Institution and Branch:** ....
Savings Account No.: .... **Institution and Branch:** ....
Name of nearest relative not living with Joint Applicant, User, or Other Party: .... **Telephone:** ....
Relationship: .... **Address:** ....

SECTION C—MARITAL STATUS

(Do not complete if this is an application for an individual account.)

Applicant: ☐ **Married** ☐ **Separated** ☐ **Unmarried (including single, divorced, and widowed)**
Other Party: ☐ **Married** ☐ **Separated** ☐ **Unmarried (including single, divorced, and widowed)**

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
4.						
5.						
6.						
Total Debts			$	$	$	

(Credit References)		Date Paid
1.	$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Closed end, secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.

☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

Amount Requested Payment Date Desired Proceeds of Credit
$ To be Used For

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): Birthdate: / /
Present Street Address: Years there:
City: State: Zip: Telephone:
Social Security No.: Driver's License No.:
Previous Street Address: Years there:
City: State: Zip:
Present Employer Years there: Telephone:
Position or title: Name of supervisor:
Employer's Address:
Previous Employer: Years there:
Previous Employer's Address:
Present net salary or commission: $ per . No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per . Source(s) of other income:

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐
Have you ever received credit from us? When? Office:
Checking Account No. Institution and Branch:
Savings Account No. Institution and Branch:
Name of nearest relative not living with you: Telephone:
Relationship: Address:

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): Birthdate: / /
Relationship to Applicant (if any):
Present Street Address: Years there:
City: State: Zip Telephone:
Social Security No.: Driver's License No.:
Present Employer: Years there: Telephone:
Position or title: Name of supervisor:
Employer's Address:
Previous Employer: Years there:
Previous Employer's Address:
Present net salary or commission: $ per . No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per . Source(s) of other income:

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐
Checking Account No.: Institution and Branch:
Savings Account No.: Institution and Branch:
Name of nearest relative not living with Joint Applicant or Other Party:
Relationship: Address:

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name	Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Closed end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.

☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, then complete Section E.

Amount Requested Payment Date Desired Proceeds of Credit

$ To be Used For

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): Birthdate: / /

Present Street Address: Years there:

City: State: Zip: Telephone:

Social Security No.: Driver's License No.:

Previous Street Address: Years there:

City: State: Zip:

Present Employer: Years there: Telephone:

Position or title: Name of supervisor:

Employer's Address:

Previous Employer: Years there:

Previous Employer's Address:

Present net salary or commission: $ per . No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per . Source(s) of other income:

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.) ☐ No

Have you ever received credit from us? When? Office

Checking Account No.:* Institution and Branch:

Savings Account No.: Institution and Branch:

Name of nearest relative not living with you: Telephone:

Relationship: Address:

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): Birthdate: / /

Relationship to Applicant (if any):

Present Street Address: Years there:

City: State: Zip: Telephone:

Social Security No.: Driver's License No.:

Present Employer: Years there: Telephone:

Position or title: Name of supervisor:

Employer's Address:

Previous Employer: Years there:

Previous Employer's Address:

Present net salary or commission: $ per No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per . Source(s) of other income:

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.) ☐ No

Checking Account No.: Institution and Branch:

Savings Account No.: Institution and Branch:

Name of nearest relative not living with Joint Applicant or Other Party: Telephone:

Relationship: Address:

SECTION C—MARITAL STATUS
(Do not complete if this is an application for individual unsecured credit.)
Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References)		Date Paid
1.	$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "Yes," for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "Yes," to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "Yes," where? Year

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name	Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ **If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.**

☐ **In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.**

Amount Requested $ **Payment Date Desired** **Proceeds of Credit To be Used For**

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): **Birthdate: / /**

Present Street Address **Years there:**

City: **State:** **Zip:** **Telephone:**

Social Security No.: **Driver's License No.:**

Previous Street Address: **Years there:**

City: **State:** **Zip:**

Present Employer: **Years there:** **Telephone:**

Position or title: **Name of supervisor:**

Employer's Address:

Previous Employer: **Years there:**

Previous Employer's Address:

Present net salary or commission: $ **per** **. No. Dependents:** **Ages:**

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ **per** **. Source(s) of other income:**

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? **When?** **Office:**

Checking Account No.: **Institution and Branch:**

Savings Account No.: **Institution and Branch:**

Name of nearest relative not living with you **Telephone:**

Relationship: **Address:**

SECTION B—INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): **Birthdate: / /**

Relationship to Applicant (if any): **Years there:**

Present Street Address:

City: **State:** **Zip:** **Telephone:**

Social Security No.: **Driver's License No.:**

Present Employer: **Years there:** **Telephone:**

Position or title: **Name of supervisor:**

Employer's Address:

Previous Employer: **Years there:**

Previous Employer's Address:

Present net salary or commission: $ **per** **. No. Dependents:** **Ages:**

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ **per** **. Source(s) of other income:**

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No.: **Institution and Branch:**

Savings Account No.: **Institution and Branch:**

Name of nearest relative not living with Spouse, Joint Applicant, User, or other Party: **Telephone:**

Relationship: **Address:**

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Spouse, Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Name of Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) **Date Paid**

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes," for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes," to whom owed?

Have you been declared bankrupt in the last 14 years Yes ☐ No ☐ If "yes," where? Year

Other obligations—(E.g., Liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name **Address**

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date

[Residential real estate mortgage loan]

RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR ☞	☐ Conventional ☐ FHA ☐ VA ☐ ______	Amount $______	Interest Rate ____%	No. of Months	Monthly Payment Principal & Interest $______	Escrow/Impounds (to be collected monthly) ☐ Taxes ☐ Hazard Ins. ☐ Mtg. Ins. ☐ ______

Prepayment Option

1. SUBJECT PROPERTY

Property Street Address	City	County	State	Zip	No. Units

Legal Description (Attach description if necessary.)	Year Built

Purpose of Loan: ☐ Purchase ☐ Construction-Permanent ☐ Construction ☐ Refinance ☐ Other (Explain)

Complete this line if Construction-Permanent or Construction Loan ☞	Lot Value Data Year Acquired ______	Original Cost $______	Present Value (a) $______	Cost of Impvs. (b) $______	Total (a + b) $______	ENTER TOTAL AS PURCHASE PRICE IN DETAILS OF PURCHASE

Complete this line if a Refinance Loan

Year Acquired	Original Cost $	Amt. Existing Liens $	Purpose of Refinance	Describe Improvements [ ] made [ ] to be made Cost: $______

Title Will Be Held In What Name(s)	Manner in Which Title Will Be Held

Source of Down Payment and Settlement Charges

This application is designed to be completed by the borrower(s) with the lender's assistance. The Co-Borrower Section and all other Co-Borrower questions must be completed and the appropriate box(es) checked if ☐ another person will be jointly obligated with the Borrower on the loan, ☐ the Borrower is relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as a basis for repayment of the loan, or ☐ the Borrower is married and resides, or the property is located, in a community property state.

2. BORROWER	3. CO-BORROWER
Name — Age — School Yrs.	Name — Age — School Yrs.
Present Address No. Years ______ ☐ Own ☐ Rent	Present Address No. Years ______ ☐ Own ☐ Rent
Street ______	Street ______
City/State/Zip ______	City/State/Zip ______
Former address if less than 2 years at present address	Former address if less than 2 years at present address
Street ______	Street ______
City/State/Zip ______	City/State/Zip ______
Years at former address ☐ Own ☐ Rent	Years at former address ☐ Own ☐ Rent
Marital Status ☐ Married ☐ Separated ☐ Unmarried (incl. single, divorced, widowed)	Marital Status ☐ Married ☐ Separated ☐ Unmarried (incl. single, divorced, widowed)
Dependents other than listed by Co-borrower: No. — Ages	Dependents other than listed by Borrower: No. — Ages
Name and Address of Employer	Name and Address of Employer
Years employed in this line of work or profession? ______ years Years on this job ______ ☐ Self Employed	Years employed in this line of work or profession? ______ years Years on this job ______ ☐ Self Employed
Position/Title — Type of Business	Position/Title — Type of Business
Social Security Number — Home Phone — Business Phone	Social Security Number — Home Phone — Business Phone

4. GROSS MONTHLY INCOME 5. MONTHLY HOUSING EXPENSE 6. DETAILS OF PURCHASE

Item	Borrower	Co-Borrower	Total		Present*	~~Proposed~~		
				Rent	$			
Base Empl. Income	$	$	$	First Mortgage (P&I)		$	a. Purchase Price	$
Overtime				Other Financing (P&I)			b. Total Closing Costs (Est.)	
Bonuses				Hazard Insurance			c. Pre Paid Escrows (Est.)	
Commissions				Real Estate Taxes			d. Total (a+b+c)	$
Dividends/Interest				Mortgage Insurance			e. Amount of Mortgage	( )
Net Rental Income				Homeowner Assn. Dues			f. Other Financing	( )
Other† (Before completing, see notice under Describe Other Income below.)				Other:			g. Present Equity in Lot	( )
				Total Monthly Pmt.	$	$	h. Amount of Cash Deposit	( )
				Utilities			i. Closing Costs Paid by Seller	( )
Total	$	$	$	Total	$	$	j. Cash Reqd. For Closing (Est.)	$

7. DESCRIBE OTHER INCOME

⇩	B—Borrower C—Co-Borrower	NOTICE: † Alimony, child support, or separate maintenance income need not be revealed if the Borrower or Co-Borrower does not choose to have it considered as a basis for repaying this loan.	Monthly Amount
			$

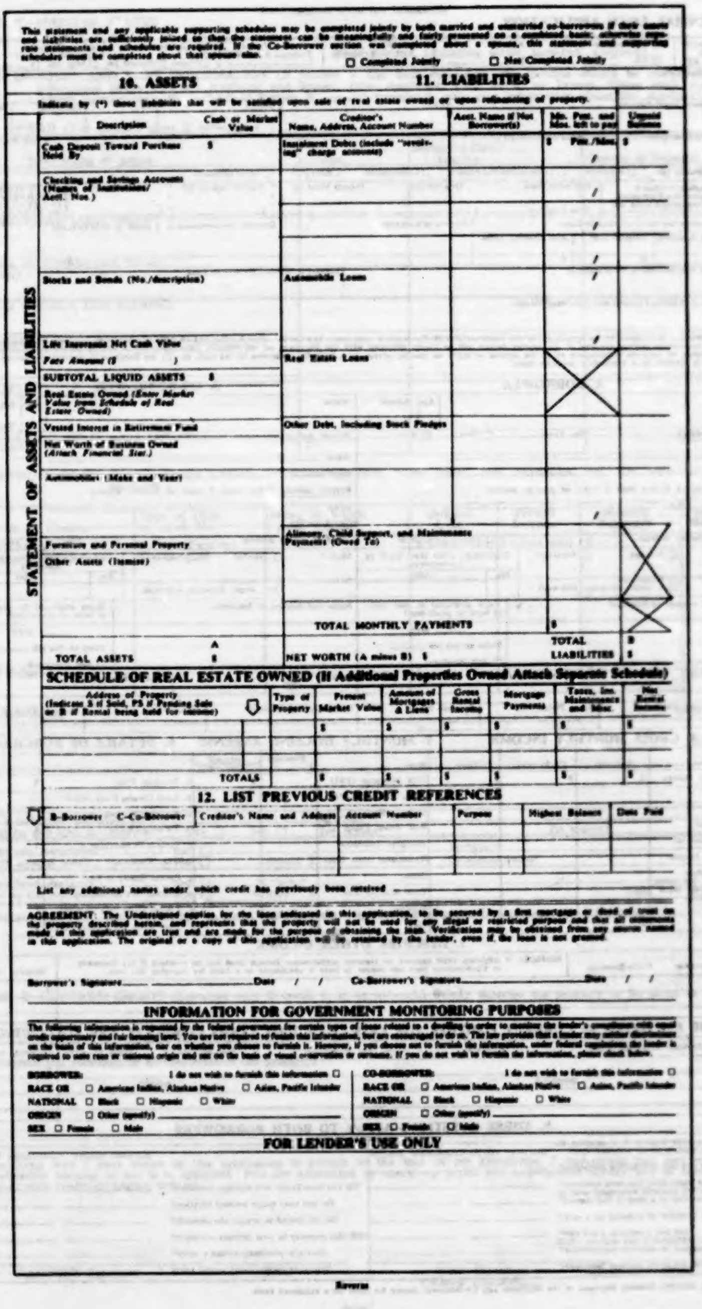
8. IF EMPLOYED IN CURRENT POSITION FOR LESS THAN TWO YEARS COMPLETE THE FOLLOWING

B/C	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Income
						$

9. THESE QUESTIONS APPLY TO BOTH BORROWERS

If a "yes" answer is given to a question in this column, explain on an attached sheet.	Borrower Yes/No	Co-Borrower Yes/No		Borrower Yes/No	Co-Borrower Yes/No
Have you any outstanding judgments?	______	______			
In the last 14 years, have you been bankrupt?	______	______	Do you have health and accident insurance?	______	______
Have you had property foreclosed upon or given title or a deed in lieu thereof?	______	______	Do you have major medical coverage?	______	______
Are you a co-maker or endorser on a note?	______	______	Do you intend to occupy the property?	______	______
Are you a party in a law suit?	______	______	Will this property be your primary residence?	______	______
Are you obligated to pay alimony, child support, or separate maintenance?	______	______	Have you previously owned a home?	______	______
Is any part of the down payment borrowed?	______	______	Sale price of previously owned home	$ ______	$ ______

* All Present Monthly Housing Expenses of the Borrower and Co-Borrower should be listed on a combined basis.



This statement and any applicable supporting schedules may be completed jointly by both married and unmarried co-borrowers if their assets and liabilities are sufficiently joined so that the statement can be meaningfully and fairly presented on a combined basis; otherwise separate statements and schedules are required. If the Co-Borrower section was completed about a spouse, this statement and supporting schedules must be completed about that spouse also.

☐ Completed Jointly ☐ Not Completed Jointly

STATEMENT OF ASSETS AND LIABILITIES

10. ASSETS

11. LIABILITIES

Indicate by (*) those liabilities that will be satisfied upon sale of real estate owned or upon refinancing of property.

Description	Cash or Market Value	Creditor's Name, Address, Account Number	Acct. Name if Not Borrower(s)	Mo. Pmt. and Mos. left to pay	Unpaid Balance
Cash Deposit Toward Purchase Held By	$	Installment Debts (include "revolving" charge accounts)		$ Pmt./Mos. /	$
Checking and Savings Accounts (Names of Institutions/Acct. Nos.)				/	
				/	
				/	
Stocks and Bonds (No./description)		Automobile Loans		/	
Life Insurance Net Cash Value *Face Amount ($)*				/	
SUBTOTAL LIQUID ASSETS	$	Real Estate Loans			
Real Estate Owned *(Enter Market Value from Schedule of Real Estate Owned)*					
Vested Interest in Retirement Fund		Other Debt, Including Stock Pledges			
Net Worth of Business Owned *(Attach Financial Stat.)*					
Automobiles (Make and Year)				/	
Furniture and Personal Property		Alimony, Child Support, and Maintenance Payments (Owed To)			
Other Assets (Itemize)					
		TOTAL MONTHLY PAYMENTS		$	
TOTAL ASSETS	A $	NET WORTH (A minus B) $		TOTAL LIABILITIES	B $

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned Attach Separate Schedule)

Address of Property (Indicate S if Sold, PS if Pending Sale or R if Rental being held for income)	⇩	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins. Maintenance and Misc.	Net Rental Income
			$	$	$	$	$	$
TOTALS			$	$	$	$	$	$

12. LIST PREVIOUS CREDIT REFERENCES

⇩ B-Borrower C-Co-Borrower	Creditor's Name and Address	Account Number	Purpose	Highest Balance	Date Paid

List any additional names under which credit has previously been received ________

AGREEMENT: The Undersigned applies for the loan indicated in this application, to be secured by a first mortgage or deed of trust on the property described herein, and represents that the property will not be used for any illegal or restricted purpose and that all statements made in this application are true and are made for the purpose of obtaining the loan. Verification may be obtained from any source named in this application. The original or a copy of this application will be retained by the lender, even if the loan is not granted.

Borrower's Signature ________ Date / /   Co-Borrower's Signature ________ Date / /

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity and fair housing laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. However, if you choose not to furnish the information, under Federal regulations the lender is required to note race or national origin and sex on the basis of visual observation or surname. If you do not wish to furnish the information, please check below.

BORROWER: I do not wish to furnish this information ☐
RACE OR NATIONAL ORIGIN ☐ American Indian, Alaskan Native ☐ Asian, Pacific Islander ☐ Black ☐ Hispanic ☐ White ☐ Other (specify) ________
SEX ☐ Female ☐ Male

CO-BORROWER: I do not wish to furnish this information ☐
RACE OR NATIONAL ORIGIN ☐ American Indian, Alaskan Native ☐ Asian, Pacific Islander ☐ Black ☐ Hispanic ☐ White ☐ Other (specify) ________
SEX ☐ Female ☐ Male

FOR LENDER'S USE ONLY

Reverse

APPENDIX C—SAMPLE NOTIFICATION FORMS

This appendix contains six sample notification forms. Forms C-1 through C-4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under § 202.9 (a)(1) and (2)(i) of this regulation. Form C-5 is a notice of disclosure of the right to request specific reasons for adverse action under § 202.9 (a)(1) and (2)(ii). Form C-6 is designed for use in notifying an applicant, under § 202.9(c)(2), that an application is incomplete.

Form C-1 contains the Fair Credit Reporting Act disclosure as required by sections 615 (a) and (b) of that act. Forms C-2 through C-5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that played a part in the credit decision). A creditor must provide the section 615(b) disclosure (that a creditor obtained information from an outside source other than a consumer reporting agency that played a part in the credit decision) where appropriate.

The sample forms are illustrative and may not be appropriate for all creditors. They were designed to include some of the factors that creditors most commonly consider. If a creditor chooses to use the checklist of reasons provided in one of the sample forms in this appendix and if reasons commonly used by the creditor are not provided on the form, the creditor should modify the checklist by substituting or adding other reasons. For example, if "inadequate down payment" or "no deposit relationship with us" are common reasons for taking adverse action on an application, the creditor ought to add or substitute such reasons for those presently contained on the sample forms.

If the reasons listed on the forms are not the factors actually used, a creditor will not satisfy the notice requirement by simply checking the closest identifiable factor listed. For example, some creditors consider only references from banks or other depository institutions and disregard finance company references altogether; their statement of reasons should disclose "insufficient bank references," not "insufficient credit references." Similarly, a creditor that considers bank references and other credit references as distinct factors should treat the two factors separately and disclose them as appropriate. The creditor should either add such other factors to the form or check "other" and include the appropriate explanation. The creditor need not, however, describe how or why a factor adversely affected the application. For example, the notice may say "length of residence" rather than "too short a period of residence."

A creditor may design its own notification forms or use all or a portion of the forms contained in this appendix. Proper use of Forms C-1 through C-4 will satisfy the requirement of § 202.9(a)(2)(i). Proper use of Forms C-5 and C-6 constitutes full compliance with §§ 202.9(a)(2)(ii) and 202.9(c)(2), respectively.

FORM C-1 -- SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Statement of Credit Denial, Termination, or Change

DATE ________

Applicant's Name: ____________________

Applicant's Address: ____________________

Description of Account, Transaction, or Requested Credit:

____

Description of Action Taken:

____

____

PART I - PRINCIPAL REASONS(S) FOR CREDIT DENIAL, TERMINATION,
OR OTHER ACTION TAKEN CONCERNING CREDIT.
This section must be completed in all instances.

____Credit application incomplete

____Insufficient number of credit references provided

____Unacceptable type of credit references provided

____Unable to verify credit references

____Temporary or irregular employment

____Unable to verify employment

____Length of employment

____Income insufficient for amount of credit requested

____Excessive obligations in relation to income

____Unable to verify income

____Length of residence

____Temporary residence

____Unable to verify residence

____No credit file

____Limited credit experience

____Poor credit performance with us

____Delinquent past or present credit obligations with others

____Garnishment, attachment, foreclosure, repossession, collection action, or judgment

____Bankruptcy

____Value or type of collateral not sufficent

____Other, specify:____

FORM C-1, page 2

PART II - DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE. This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

___ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you.

Name: ______________________
____
Address: ______________________
____
Telephone number: ______________________

___ Our credit decision was based in whole or in part on information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's name: ______________________
Creditor's address: ______________________
Creditor's telephone number: __________

NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

FORM C-2 -- SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Date

Dear Applicant:

Thank you for your recent application. Your request for [a loan/a credit card/ an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

YOUR INCOME:
____ is below our minimum requirement.
____ is insufficient to sustain payments on the amount of credit requested.
____ could not be verified.

YOUR EMPLOYMENT:
____ is not of sufficient length to qualify.
____ could not be verified.

YOUR CREDIT HISTORY:
____ of making payments on time was not satisfactory.
____ could not be verified.

YOUR APPLICATION:
____ lacks a sufficient number of credit references.
____ lacks acceptable types of credit references.
____ reveals that current obligations are excessive in relation to income.

OTHER: ____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and telephone number of the reporting agency]. The reporting agency is unable to supply specific reasons why we have denied credit to you. You do, however, have a right under the Fair Credit Reporting Act to know the information contained in your credit file. Any questions regarding such information should be directed to [consumer reporting agency].

If you have any questions regarding this letter you should contact us at [creditor's name, address and telephone number].

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national orgin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faitn exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

FORM C-3 -- SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS (CREDIT SCORING)

Date

Dear Applicant:

Thank you for your recent application for ______________________. We regret that we are unable to approve your request.

Your application was processed by a credit scoring system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons why you did not score well compared to other applicants were:

- * Insufficient bank references
- * Type of occupation
- * Insufficent credit experience

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The reporting agency played no part in our decision other than providing us with credit information about you. Under the Fair Credit Reporting Act, you have a right to know the information provided to us. It can be obtained by contacting: [name, address, and telephone number of the consumer reporting agency].

If you have any questions regarding this letter, you should contact us at

Creditor's Name: ____________________

Address: ____________________

____

Telephone: ____________________

Sincerely,

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

FORM C-4 -- SAMPLE NOTICE OF ACTION TAKEN, STATEMENT OF REASONS AND COUNTEROFFER

Date

Dear Applicant:

Thank you for your application for ____________. We are unable to offer you credit on the terms that you requested for the following reason(s): ____.

We can, however, offer you credit on the following terms: ____________ ____.

If this offer is acceptable to you, please notify us within [amount of time] at the following address: ____

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.

You should know that the federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate federal enforcement agency listed in Appendix A]

Sincerely,

FORM C-5 -- SAMPLE DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT DENIAL

Date

Dear Applicant:

Thank you for applying to us for ______________.

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time.

If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receving your request.

Creditor's Name
Address
Telephone number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and telephone number is shown below. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name
Address
Telephone number

Sincerely,

NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

FORM C-6 -- SAMPLE NOTICE OF INCOMPLETE APPLICATION AND REQUEST FOR ADDITIONAL INFORMATION

Creditor's name
Address
Telephone number

Date

Dear Applicant:

Thank you for your application for credit. The following information is needed to make a decision on your application: ______________________________

____

We need to receive this information by __(date)____. If we do not receive it by that date, we will regrettably be unable to give further consideration to your credit request.

Sincerely,

APPENDIX D—ISSUANCE OF STAFF INTERPRETATIONS

Official Staff Interpretations

Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this regulation. These interpretations provide the protection afforded under section 706(e) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

Requests for Issuance of Official Staff Interpretations

A request for an official staff interpretation should be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request should contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

Scope of Interpretations

No staff interpretations will be issued approving creditor's forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

SUPPLEMENT I—OFFICIAL STAFF INTERPRETATIONS

[Reg. B; ECO-1]

Following is an official staff interpretation of Regulation B issued under authority delegated by the Federal Reserve Board to officials in the Division of Consumer and Community Affairs. References are to sections of the regulation or the Equal Credit Opportunity Act (15 U.S.C. 1601 et seq.).

INTRODUCTION

1. *Official status.* Section 706(e) of the Equal Credit Opportunity Act protects a creditor from civil liability for any act done or omitted in good faith in conformity with an interpretation issued by a duly authorized official of the Federal Reserve Board. This commentary is the means by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation B. Good-faith compliance with this commentary affords a creditor protection under section 706(e) of the Act.

2. *Issuance of interpretations.* Under Appendix D to the regulation, any person may request an official staff interpretation. Interpretations will be issued at the discretion of designated officials and incorporated in this commentary following publication for comment in the FEDERAL REGISTER. Except in unusual circumstances, official staff interpretations will be issued only by means of this commentary.

3. *Status of previous interpretations.* Interpretations of Regulation B previously issued by the Federal Reserve Board and its staff have been incorporated into this commentary as appropriate. All other previous Board and staff interpretations, official and unofficial, are superseded by this commentary.

4. *Footnotes.* Footnotes in the regulation have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

5. *Comment designations.* The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. For example, comments to § 202.2(c) are further divided by subparagraph, such as comment 2(c)(1)(ii)-1 and comment 2(c)(2)(ii)-1.

Section 202.1—Authority, Scope, and Purpose

1(a) *Authority and scope.*

1. *Scope.* The Equal Credit Opportunity Act and Regulation B apply to all credit—commercial as well as personal—without regard to the nature or type of the credit or the creditor. If a transaction provides for the deferral of the payment of a debt, it is credit covered by Regulation B even though it may not be a credit transaction covered by Regulation Z (Truth in Lending). Further, the definition of creditor is not restricted to the party or person to whom the obligation is initially payable, as is the case under Regulation Z. Moreover, the Act and regulation apply to all methods of credit evaluation, whether performed judgmentally or by use of a credit scoring system.

2. *Foreign applicability.* Regulation B generally does not apply to lending activities that occur outside the United States. The regulation does apply to lending activities that take place within the United States (as well as the Commonwealth of Puerto Rico and any territory or possession of the United States), whether or not the applicant is a citizen.

Section 202.2—Definitions

2(c) *Adverse action.*

Paragraph 2(c)(1)(ii)

1. *Move from service area.* If a credit card issuer terminates the open-end account of a customer because the customer has moved out of the card issuer's service area, the ter-

mination is "adverse action" for purposes of the regulation unless termination on this ground was explicitly provided for in the credit agreement between the parties. In cases were termination is adverse action, notification is required under § 202.9.

2. *Termination based on credit limit.* If a creditor terminates credit accounts that have low credit limits (for example, under $400) but keeps open accounts with higher credit limits, the termination is adverse action and notification is required under § 202.9.

Paragraph 2(c)(2)(ii)

1. *Default—exercise of due-on-sale clause.* If a mortgagor sells or transfers mortgaged property without the consent of the mortgagee, and the mortgagee exercises its contractual right to accelerate the mortgage loan, the mortgagee may treat the mortgagor as being in default. An adverse action notice need not be given to the mortgagor or the transferee. (See comment 2(e)-1 for treatment of a purchaser who requests to assume the loan.)

Paragraph (2)(c)(2)(iii)

1. *Point-of-sale transactions.* Denial of credit at point of sale is not adverse action except under those circumstances specified in the regulation. For example, denial, at point of sale is not adverse action in the following situations:

- A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.
- The amount of a transaction exceeds a cash advance or credit limit.
- The circumstances (such as excessive use of a credit card in a short period of time) suggests that fraud is involved.
- The authorization facilities are not functioning.
- Billing statements have been returned to the creditor for lack of a forwarding address.

Paragraph 2(c)(2)(v)

1. *Terms of credit versus type of credit offered.* When an applicant applies for credit and the creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of downpayment), a denial of the application for that reason is adverse action (unless the creditor makes a counteroffer that is accepted by the applicant) and the applicant is entitled to notification under § 202.9.

2(e) *Applicant.*

1. *Request to assume loan.* If a mortgagor sells or transfers the mortgaged property and the buyer makes an application to the creditor to assume the mortgage loan, the mortgagee must treat the buyer as an applicant unless its policy is not to permit assumptions.

2(f) *Application.*

1. *General.* A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.

2. *"Procedures established."* The term refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures. For example, if a creditor's stated policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit decision based on oral requests, the creditor's establish procedures are to accept both oral and written applications.

3. *When an inquiry becomes an application.* A creditor is encouraged to provide consumers with information about loan terms. However, if in giving information to the consumer the creditor also evaluates information about the appliant, decides to decline the request, and communicates this to the applicant, the creditor has treated the inquiry as an application and must then comply with the notification requirements under § 202.9. Whether the inquiry becomes an application depends on how the creditor responds to the applicant, not on what the appliant says or asks.

4. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place:

- When a consumer calls to asks about loan terms and an employee explains the creditor's basic loan terms, such as interest rates, loan to value ration, and debt to income ratio.
- When a consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and sale price of the car and amount of the down-payment, then given the consumer the rate.
- When a consumer asks about terms for a loan to purchase home and tells the loan officer her income and intended down-payment, but the loan officer only explains the creditor's loan to value ratio policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.
- When a consumer calls to ask about terms for a loan to purchase vacant land and states his income, the sale price of the property to be financed, and asks whether he qualifies for a loan, and the employee responds by describing the general lending policies, explaining that he would need to look at all of the applicant's qualifications before making a decision, and offering to send an application form to the consumer.

5. *Completed application—diligence requirement.* The regulation defines a complete application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or telephone number needed to verify employment, the creditor should contact the applicant promptly.

2(j) *Credit.*

1. *General.* Regulation B covers a wider range of credit transactions than Regulation Z (Truth in Lending). For purposes of Regulation B a transaction is credit if there is a right to defer payment of a debt—regardless of whether the credit is for personal or commercial purposes, the number of installments required for repayment, or whether the transaction is subject to a finance charge.

2(l) *Creditor.*

1. *Assignees.* The term "creditor" includes all persons participating in the credit decision. This may include an assignee or a potential purchaser of the obligation who influences the credit decision by indicating whether or not it will purchase the obligation if the transaction is consummated.

2. *Referrals to creditors.* For certain purposes, the term "creditor" includes persons such as real estate brokers who do not participate in credit decisions but who regularly refer applicants to creditors or who select or offer to select creditors to whom credit requests can be made. These persons must comply with § 202.4, the general rule prohibiting discrimination, and with § 202.5(a), on discouraging applications.

2(p) *Empirically derived and other credit systems.*

1. *Purpose of definition.* The definition under § 202.2(p)(1) through (iv) sets the criteria that a credit system must meet in order for the system to use age as a predictive factor. Credit systems that do not meet these criteria are judgmental systems and may consider age only for the purpose of determining a "pertinent element of creditworthiness." (Both types of systems may favor an elderly applicant. See § 202.6(b)(2).)

2. *Periodic revalidation.* The regulation does not specify how often credit scoring systems must be revalidated. To meet the requirements for statistical soundness, the credit scoring system must be revalidated frequently enough to assure that it continues to meet recognized professional statistical standards.

2(w) *Open-end credit.*

1. *Open-end real estate mortgages.* The term "open-end credit" does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

2(z) *Prohibited basis.*

1. *Persons associated with applicant.* "Prohibited basis" as used in this regulation refers to the race, color, religion, national origin, sex, marital status, or age of an applicant (or officers of an applicant in the case of a corporation). The term also refers to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that under the general rule stated in § 202.4, a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a certain religion, because of the national origin of any persons associated with the extension of credit (such as the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

2. *National origin.* A creditor may not refuse to grant credit because an applicant comes from a particular country but may take the applicant's immigration status into account. A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or the government) of a particular country or imposing limitations regarding credit extended for their use.

3. *Public assistance program.* Any federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is "public assistance" for purposes of the regulation. The term includes (but is not limited to) Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation. Only physicians, hospitals, and others to whom the benefits are payable need consider Medicare and Medicaid as public assistance.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

1. *Scope.* This section relieves burdens with regard to certain types of credit for which full application of the procedural requirements of the regulation is not needed. All classes of transactions remain subject to the general rule given in § 202.4, barring discrimination on a prohibited basis, and to any other provision not specifically excepted.

3(a) *Public utilities credit.*

1. *Definition.* This definition applies only to credit for the purchase of a utility service, such as electricity, gas, or telephone

service. Credit provided or offered by a public utility for some other purpose—such as for financing the purchase of a gas dryer, telephone equipment, or other durable goods, or for insulation or other home improvements—is not excepted.

2. *Security deposits.* A utility company is a creditor when it supplies utility service and bills the user after the service has been provided. Thus, any credit term (such as a requirement for a security deposit) is subject to the regulation.

3(c) *Incidental credit.*

1. *Examples.* If a service provider (such as a hospital, doctor, lawyer or retailer) allows the client or customer to defer the payment of a bill, this deferral of debt is credit for purposes of the regulation, even though there is no finance charge and no agreement for payment in installments. Because of the exceptions provided by this section, however, these particular credit extensions are excepted from compliance with certain procedural requirements as specified in the regulation.

3(d) *Business credit.*

1. *Definition.* The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.

Paragraph 3(d)(3)

1. *Notification.* A creditor is required in all cases to notify a business credit applicant of action taken on an application within a reasonable time of receiving a completed application. This notification may be written or oral.

3(e) *Government credit.*

1. *Credit to governments.* The exception relates to credit extended to (not by) governmental entities. For example, credit extended to a local government by a creditor in the private sector is covered by this exception, but credit extended to consumers by a federal or state housing agency does not qualify for special treatment under this category.

Section 202.4—General Rule Prohibiting Discrimination

1. *Scope of section.* The general rule stated in § 202.4 covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. Other sections of the regulation identify specific practices that the Board has decided are impermissible because they could result in credit discrimination on a basis prohibited by the act. The general rule covers, for example, application procedures, criteria used to evaluate creditworthiness, administration of accounts, and treatment of delinquent or slow accounts. Thus, whether or not specifically prohibited elsewhere in the regulation, a credit practice that treats applicants differently on a prohibited basis violates the law because it violates the general rule.

Section 202.5—Rules Concerning Taking of Applications

5(a) *Discouraging applications.*

1. *Potential applicants.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the act—to promote the availability of credit on a nondiscriminatory basis § 202.5(a) covers acts or practices directed at potential applicants. Practices prohibited by this section include:

- A statement that the applicant should not bother to apply, after the applicant states that he is retired.
- Use of words, symbols, models or other forms of communication in advertising that express, imply or suggest a discriminatory preference or a policy of exclusion in violation of the act.
- Use of interview scripts that discourage applications on a prohibited basis.

2. *Affirmative advertising.* A creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.

5(b) *General rules concerning requests for information.*

1. *Requests for information.* This section governs the types of information that a creditor may gather. Section 202.6 governs how information may be used.

5(d) *Other limitations on information requests.*

Paragraph 5(d)(1)

1. *Indirect disclosure of prohibited information.* The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:

- The applicant's obligation to pay alimony, child support, or separate maintenance.
- The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.
- Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.
- The ownership of assets, which could disclose the interest of a spouse.

Paragraph 5(d)(2)

1. *Disclosure about income.* The sample application forms in Appendix B to the regulation illustrate how a creditor may inform an applicant of the right not to disclose alimony, child support, or separate maintenance income.

2. *General inquiry about source of income.* Since a general inquiry about the source of income may lead an applicant to disclose alimony, child support, or separate maintenance, a creditor may not make such an inquiry on an application form without prefacing the request with the disclosure required by this paragraph.

3. *Specific inquiry about sources of income.* A creditor need not give the disclosure if the inquiry about income is specific and worded in a way that is unlikely to lead the applicant to disclose the fact that income is derived from alimony, child support or separate maintenance payments. For example, an application form that asks about specific types of income such as salary, wages, or investment income need not include the disclosure.

5(e) *Written applications.*

1. *Requirement for written applications.* The requirement of written applications for certain types of dwelling-related loans is intended to assist the federal supervisory agencies in monitoring compliance with the ECOA and the Fair Housing Act. Model application forms are provided in Appendix B to the regulation, although use of a printed form of any kind is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete the application on behalf of an applicant and need not require the applicant to sign the application.

2. *Telephone applications.* A creditor that accepts applications by telephone for dwelling-related credit covered by section 202.13 can meet the requirements for written applications by writing down pertinent information that is provided by the applicant(s).

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to § 202.13(b).)

Section 202.6—Rules Concerning Evaluation of Applications

6(a) *General rule concerning use of information.*

1. *General.* When evaluating an application for credit, a creditor generally may consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by § 202.5 from obtaining.

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94-589, pp. 4-5; and in the House Report that accompanied H.R. 6516, No. 94-210, p. 5. The act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. For example, requiring that applicants have incomes in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and nonminority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.

6(b) *Specific rules concerning use of information.*

Paragraph 6(b)(1)

1. *Prohibited basis—marital status.* A creditor may not use marital status as a basis for determining the applicant's creditworthiness. However, a creditor may consider an applicant's marital status for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.

2. *Prohibited basis—special purpose credit.* In a special purpose credit program, a creditor may consider a prohibited basis to determine whether the applicant possesses a characteristic needed for eligibility. (See § 202.8.)

Paragraph 6(b)(2)

1. *Favoring the elderly.* Any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older.

2. *Consideration of age in a credit scoring system.* Age may be taken directly into account in a credit scoring system that is "demonstrably and statistically sound," as defined in § 202.2(p), with one limitation: an applicant who is 62 years old or older must be treated at least as favorably as anyone who is under age 62.

3. *Consideration of age in a judgmental system.* In a judgmental system, defined in

§ 202.2(t), a creditor may not take age directly into account in any aspect of the credit transaction. For example, the creditor may not reject an application or terminate an account because the applicant is 60 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. For example:

- A creditor may consider the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.
- A creditor may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. (An elderly applicant might not qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger downpayment or a shorter loan maturity.)
- A creditor may consider the applicant's age to assess the significance of the length of the applicant's employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-time residence).

4. *Consideration of age in a combined system.* A creditor using a credit scoring system that qualifies as "empirically derived" under § 202.2(p) may consider other factors (such as credit report or the applicant's cash flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as "demonstrably and statistically sound." While age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a "pertinent element of creditworthiness." (See comment 6(b)(2)-3.)

5. *Consideration of public assistance.* When considering income derived from a public assistance program, a creditor may take into account, for example:

- The length of time an applicant will likely remain eligible to receive such income.
- Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (such as Aid to Families with Dependent Children or Social Security payments to a minor).
- Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

Paragraph 6(b)(5)

1. *Consideration of an individual applicant.* A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance, retirement benefits, or public assistance (all referred to as "protected income") on an individual basis, not on the basis of aggregate statistics, and must assess its reliability or unreliability by analyzing the applicant's actual circumstances, not by analyzing statistical measures derived from a group.

2. *Payments consistently made.* In determining the likelihood of consistent payments of alimony, child support, or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the availability of court or other procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when it is available to the creditor.

3. *Consideration of income.* A creditor need not consider income at all in evaluating creditworthiness. If a creditor does consider income, there are several acceptable methods, whether in a credit scoring or a judgmental system:

- A creditor may score or take into account the total sum of all income stated by the applicant without taking steps to evaluate the income.
- A creditor may evaluate each component of the applicant's income, and then score or take into account reliable income separately from income that is not reliable, or the creditor may disregard that portion of income that is not reliable before aggregating it with reliable income.
- A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income that is not evaluated.

In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances.

4. *Part-time employment, sources of income.* A creditor may score or take into account the fact that an individual applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently than earned income from a primary source. However, the creditor may not score or otherwise take into account the number of sources for protected income—for example, retirement income, social security, alimony. Nor may the creditor treat negatively the fact that an applicant's only earned income is derived from a part-time job.

Paragraph 6(b)(6)

1. *Types of credit references.* A creditor may restrict the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. However, on the applicant's request, a creditor must consider credit information not reported through a credit bureau when the information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.

Paragraph 6(b)(7)

1. *National origin—immigration status.* The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

2. *National origin—citizenship.* Under the regulation a denial of credit on the ground that an applicant is not a United States citizen is nor per se discrimination based on national origin.

Section 202.7—Rules Concerning Extensions of Credit

7(a) *Individual accounts.*

1. *Open-end credit—authorized user.* A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. However, the creditor may condition the designation of an authorized user by the account holder on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.

2. *Open-end credit—choice of authorized user.* A creditor that permits an account holder to designate an authorized user may not restrict this designation on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a nonspouse as an authorized user.

3. *Overdraft authority on transaction accounts.* If a transaction account (such as a checking account or NOW account) includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction account assume liability for any overdraft.

7(b) *Designation of name.*

1. *Single name on account.* A creditor may require that joint applicants on an account designate a single name for purposes of administering the account and that a single name be embossed on any credit card(s) issued on the account. But the creditor may not require that the name be the husband's name. (See § 202.10 for rule governing the furnishing of credit history on accounts held by spouses.)

7(c) *Action concerning existing open-end accounts.*

Paragraph 7(c)(1)

1. *Termination coincidental with marital status change.* When an account holder's marital status changes, a creditor generally may not terminate the account unless it has evidence that the account holder is unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in marital status, when one or both spouses:

- Repudiate responsibility for future charges on the joint account.
- Request separate accounts in their own names.
- Request that the joint account be closed.

2. *Updating information.* A creditor may periodically request updated information from applicants but may not use events related to a prohibited basis—such as an applicant's retirement, reaching a particular age, or change in name or marital status—to trigger such a request.

Paragraph 7(c)(2)

1. *Procedure pending reapplication.* A creditor may require a reapplication from a contractually liable party, even when there is no evidence of unwillingness or inability to repay, if (1) the credit was based on the qualifications of a person who is no longer available to support the credit and (2) the creditor has information indicating that the account holder's income by itself may be insufficient to support the credit. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may specify a reasonable time period within which the account holder must submit the required information.

7(d) *Signature of spouse or other person.*

1. *Qualified applicant.* The signature rules assure that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. *Unqualified applicant.* When an applicant applies for individual credit but does not alone meet a creditor's standards, the creditor may require a cosigner, guarantor

or the like—but cannot require that it be the spouse. (See commentary to § 202.7(d) (5) and (6).)

Paragraph 7(d)(1)

1. *Joint applicant.* The term "joint applicant" refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.

Paragraph 7(d)(2)

1. *Jointly owned property.* In determining the value of the applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition and the cost of such action. If the applicant's interest in the property does not support the amount and terms of credit sought, the creditor may give the applicant some other option of providing additional support for the extension of credit. For example:

- Requiring an additional party under § 202.7(d)(5).
- Offering to grant the applicant's request on a secured credit basis.
- Asking for the signature of the co-owner of the property on an instrument that assures access to the property but does not impose personal liability unless necessary under state law.

2. *Need for signature—reasonable belief.* A creditor's reasonable belief as to what instruments need to be signed by a person other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

Paragraph 7(d)(3)

1. *Residency.* In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may assume that the applicant is a resident of the state unless the applicant indicates otherwise.

Paragraph 7(d)(4)

1. *Creation of enforceable lien.* Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing only the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require them to do so.

2. *Need for signature—reasonable belief.* Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to assure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. *Integrated instruments.* When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be required to sign the integrated instrument if the signature is only needed to grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse's signature—that the spouse's signature is only to grant a security interest and that signing the instrument does not impose personal liability.

Paragraph 7(d)(5)

Qualifications of additional parties. In establishing guidelines for eligibility of guarantors, cosigners, or similar additional parties, a creditor may restrict the applicant's choice of additional parties but may not discriminate on the basis of sex, marital status or any other prohibited basis. For example, the creditor could require that the additional party live in the creditor's market area.

2. *Income of another person.* An applicant who requests inidividual credit relying on the income of another person (such as a spouse) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature may be required if the applicant relies on the separate income of another person, i.e., income that as a matter of state law is not community property.

3. *Renewals.* If the borrower's creditworthiness is reevaluated when a credit obligation is renewed, the creditor must determine whether an additional party is still warranted and, if not, release the additional party.

Paragraph 7(d)(6)

1. *Guarantees.* A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. The rules in § 202.7(d) bar a creditor from requiring the signature of a *guarantor's spouse* just as they bar the creditor from requiring the signature of an *applicant's spouse.* For example, when all officers of a closely held corporation are required to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign. Howev-

er, an evaluation of the financial circumstances of an officer may indicate that an additional signature is necessary, and this may be the signature of a spouse in appropriate circumstances.

7(e) *Insurance*

1. *Differences in terms.* Differences in the availability, rates, and other terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant does not violate Regulation B.

2. *Insurance information.* A creditor may obtain information about an applicant's age, sex, or marital status for insurance purposes. The information may only be used, however, for determining eligibility and premium rates for insurance, and not in making the credit decision.

Section 202.8—Special Purpose Credit Programs

8(a) *Standards for programs.*

1. *Determining qualified programs.* The Board does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an "economically disadvantaged class of persons." The agency or creditor administering or offering the loan program must make these decisions regarding the status of its program.

2. *Compliance with a program authorized by federal or state law.* A creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by a government agency implementing a special purpose credit program under § 202.8(a)(1). It is the agency's responsibility to promulgate a regulation that is consistent with federal and state law.

3. *Expressly authorized.* Credit programs authorized by federal or state law include programs offered pursuant to federal, state or local statute, regulation or ordinance, or by judicial or administrative order.

4. *Creditor liability.* A refusal to grant credit to an applicant is not a violation of the act or regulation if the applicant does not meet the eligibility requirements under a special purpose credit program.

8(b) *Rules in other sections.*

1. *Applicability of rules.* A creditor that rejects an application because the applicant does not meet the eligibility requirements (common characteristic or financial need, for example) must nevertheless notify the applicant of action taken as required by 202.9.

8(c) *Special rule concerning requests and use of information.*

1. *Request of prohibited information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§ 202.5 and 202.6 to determine an applicant's eligibility for a particular program.

2. *Examples.* Examples of programs under which the creditor can ask for and consider information related to prohibited basis are:

- Energy conservation programs to assist the elderly, for which the creditor must consider the applicant's age.
- Programs under a Minority Enterprise Small Business Investment Corporation, for which a creditor must consider the applicant's minority status.

8(d) *Special rule in the case of financial need.*

1. *Request of prohibited information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§ 202.5 and 202.6, and to require signatures that would otherwise be prohibited by § 202.7(d).

2. *Examples.* Examples of programs in which financial need is a criterion are:

- Subsidized housing programs for low- to moderate-income households, for which a creditor may have to consider the applicant's receipt of alimony or child support, the spouse's or parents' income, etc.
- Student loan programs based on the family's financial need, for which a creditor may have to consider to spouse's or parents' financial resources.

3. *Student loans.* In a guaranteed student loan program, a creditor may obtain the signature of a parent as a guarantor when required by federal or state law or agency regulation, or when the student does not meet the creditor's standards of creditworthiness. (See §§ 202.7(d)(1) and (5).) The creditor may not require an additional signature when a student has a work or credit history that satisfies the creditor's standards.

Section 202.9—Notifications

1. *Use of the term "adverse action."* The regulation does not require that a creditor use the term "adverse" in communicating to an applicant that a request for an extension of credit has not been approved. In notifying an applicant of adverse action as defined by § 202.2(c)(1), a creditor may use any words or phrases that describe the action taken on the application.

2. *Expressly withdrawn applications.* When an applicant expressly withdraws a credit application, the creditor is not required to comply with the notification requirements under § 202.9. (The creditor must, however, comply with the record retention requirements of the regulation. See § 202.12(b)(3).)

3. *When notification occurs.* Notification occurs when a creditor delivers or mails a notice to the applicant's last known address or, in the case of an oral notification, when the creditor communicates the credit decision to the applicant.

4. *Location of notice.* The notifications required under § 202.9 may appear on either or both sides of a form or letter.

9(a) *Notification of action taken, ECOA notice, and statement of specific reasons.*

Paragraph 9(a)(1)

1. *Timing of notice—when an application is complete.* Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the creditor has 30 days in which to notify the applicant of the credit decision. (See also comment 2(f)-5.)

2. *Notification of approval.* Notification of approval may be express or by implication. For example, the creditor will satisfy the notification requirement when it gives the applicant the credit card, money, property, or services requested.

3. *Incomplete application—denial for reasons other than incompleteness.* When an application is missing information but provides sufficient data for a credit decision, the creditor may evaluate the application and notify the applicant under this section as appropriate. If credit is denied, the applicant must be given the specific reasons for the credit denial (or notice of the right to receive the reasons); in this instance the incompleteness of the application cannot be given as the reason for the denial.

4. *Length of counteroffer.* Section 202.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or any other particular length of time.

5. *Counteroffer combined with adverse action notice.* A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with § 202.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer. A sample of a combined notice is contained in form C-4 of Appendix C to the regulation.

6. *Denial of a telephone application.* When an application is conveyed by means of telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.

9(b) *Form of ECOA notice and statement specific reasons.*

Paragraph 9(b)(1)

1. *Substantially similar notice.* The ECOA notice sent with a notification of a credit denial or other adverse action will comply with the regulation if it is "substantially similar" to the notice contained in § 202.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain scoring systems, or add a reference to a similar state statute or regulation and to a state enforcement agency.

Paragraph 9(b)(2)

1. *Number of specific reasons.* A creditor must disclose the principal reasons for denying an application or taking other adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

2. *Source of specific reasons.* The specific reasons disclosed under § 202.9 (a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. *Description of reasons.* A creditor need not describe how or why a factor adversely affected an applicant. For example, the notice may say "length of residence" rather than "too short a period of residence."

4. *Credit scoring system.* If a creditor bases the denial or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, "age of automobile") even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

5. *Credit scoring—method for selecting reasons.* The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

6. *Judgmental system.* If a creditor uses a judgmental system, the reasons for the denial or other adverse action must relate to those factors in the applicant's record actually reviewed by the person making the decision.

7. *Combined credit scoring and judgmental system.* If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judg-

mental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally, even if the factors were also considered in the credit scoring component.

8. *Automatic denial.* Some credit decision methods contain features that call for automatic denial because of one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, the applicant's declaration of bankruptcy, or the fact that the applicant is a minor). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.

9. *Combined ECOA-FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or from its own files. Disclosing that a credit report was obtained and used to deny the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy § 202.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinguent credit obligations. To satisfy the FCRA requirement, the credit must also disclose that a credit report was obtained and used to deny credit. Sample forms C-1 through C-5 of Appendix C of the regulation provide for the two disclosures.

9(c) *Incomplete applications.*

Paragraph 9(c)(2)

1. *Reapplication.* If information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the creditor, the creditor may require the applicant to make a new application.

Paragraph 9(c)(3)

1. *Oral inquiries for additional information.* If the applicant fails to provide the information in response to an oral request, a creditor must send a written notice to the applicant within the 30-day period specified in § 202.9 (c)(1) and (c)(2). If the applicant does provide the information, the creditor shall take action on the application and notify the applicant in accordance with § 202.9(a).

9(g) *Applications submitted through a third party.*

1. *Third parties.* The notification of adverse action may be given by one of the creditors to whom an application was submitted. Alternatively, the third party may be a noncreditor.

2. *Third-party notice—enforcement agency.* If a single adverse action notice is being provided to an applicant on behalf of several creditors and they are under the jurisdiction of different federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.

3. *Third-party notice—liability.* When a notice is to be provided through a third party, a creditor is not liable for an act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adapted to prevent such violations.

Section 202.10—Furnishing of Credit Information

1. *Scope.* The requirements of § 202.10 for designating and reporting credit information apply only to creditors that furnish credit information to credit bureaus or to other creditors. There is no requirement that a creditor furnish credit information on its accounts.

2. *Reporting on all accounts.* The requirements of § 202.10 apply only to accounts held or used by spouses. However, a creditor has the option to designate all joint accounts (or all accounts with an authorized user) to reflect the participation of both parties, whether or not the accounts are held by persons married to each other.

3. *Designating accounts.* In designating accounts and reporting credit information, a creditor need not distinguish between accounts on which the spouse is an authorized user and accounts on which the spouse is a contractually liable party.

4. *File and index systems.* The regulation does not require the creation or maintenance of separate files in the name of each participant on a joint or user account, or require any other particular system of recordkeeping or indexing. It requires only that a creditor be able to report information in the name of each spouse on accounts covered by § 202.10. Thus, if a creditor receives a credit inquiry about the wife, it should be able to

locate her credit file without asking the husband's name.

10(a) *Designation of accounts.*

1. *New parties.* When new parties who are spouses undertake a legal obligation on an account, as in the case of a mortgage loan assumption, the creditor should change the designation on the account to reflect the new parties and should furnish subsequent credit information on the account in the new names.

2. *Request to change designation of account.* A request to change the manner in which information concerning an account is furnished does not alter the legal liability of either spouse upon the account and does not require a creditor to change the name in which the account is maintained.

Section 202.12—Record Retention

12(a) *Retention of prohibited information.*

1. *Receipt of prohibited information.* Unless the creditor specifically requested such information, a creditor does not violate this section when it receives prohibited information from a consumer reporting agency.

2. *Use of retained information.* Although a creditor may keep in its files prohibited information as provided in § 202.12(a), the creditor may use the information in evaluating credit applications only if permitted to do so by § 202.6.

12(b) *Preservation of records.*

1. *Copies.* A copy of the original record includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer.

2. *Computerized decisions.* A creditor that enters information items from a written application into a computerized or mechnaized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with § 202.12(b) by retaining the information actually entered. It is not required to store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to § 202.13, however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.

Paragraph 12(b)(3)

1. *Withdrawn and brokered applications.* In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. (See, for example, comment 9-2.) In such cases, the 25-month requirement runs from the date of application, as when:

- An application is withdrawn by the applicant.
- An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

Section 202.13—Information for Monitoring purposes

13(a) *Information to be requested.*

1. *Natural person.* Section 202.13 applies only to applications from natural persons.

2. *Principal residence.* The requirements of § 202.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two- to four-unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.

3. *Temporary financing.* An application for temporary financing to construct a dwelling is not subject to § 202.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to § 202.13.

4. *New principal residence.* A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of § 202.13.

5. *Refinancings.* A creditor who receives an application to change the terms and conditions of an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again, but is not required to do so if it was obtained in the earlier transaction.

13(b) *Obtaining of information.*

1. *Forms for collecting data.* A creditor may collect the information specified in § 202.13(a) either on an application form or on a separate form referring to the application.

2. *Written applications.* The regulation requires written applications for the types of credit covered by § 202.13. A creditor can satisfy this requirement by recording in writing or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.

3. *Telephone, mail applications.* If an applicant does not apply in person for the credit requested, a creditor does not have to

complete the monitoring information. For example:

- When a creditor accepts an application by telephone, it does not have to request the monitoring information.
- When a creditor accepts an application by mail, it does not have to make a special request to the applicant if the applicant fails to complete the monitoring information on the application form sent to the creditor.

If it is not evident on the face of the application that it was received by mail or telephone, the creditor should indicate on the form or other application record how the application was received.

4. *Applications through loan shopping services.* When a creditor accepts an application through an unaffiliated loan shopping service, it does not have to request the monitoring information.

5. *Inadvertent notation.* If a creditor inadvertently obtains the monitoring information in a dwelling related transaction not covered by § 202.13, the creditor may process and retain the application without violating the regulation.

13(c) *Disclosure to applicant(s).*

1. *Procedures for providing disclosures.* The disclosures to an applicant regarding the monitoring information may be provided in writing. Appendix B contains a sample disclosure. A creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the applicant to provide the monitoring information if it is requested in writing.

13(d) *Substitute monitoring program.*

1. *Substitute program.* An enforcement agency may adopt, under its established rulemaking or enforcement procedures, a program requiring creditors under its jurisdiction to collect information in addition to that required by this section.

Section 202.14—Enforcement, penalties and liabilities

14(c) *Failure of compliance.*

1. *Inadvertent errors.* Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

2. *Correction of error.* For inadvertent errors that occur under §§ 202.12 and 202.13, this section requires that they be corrected prospectively only.

APPENDIX B—MODEL APPLICATION FORMS

1. *FHLMC/FNMA form—residential loan application.* The residential loan application form (FHLMC 65/FNMA 1003) and supplemental form (FHLMC 65A/FNMA 1003A) prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association comply with the requirements of this regulation.

2. *FHLMC/FNMA form—home improvement loan application.* The home improvement and energy loan application form (FHLMC Form 703/FNMA Form 1012) prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association comply with the requirements of this regulation.

PART 202a—EQUAL CREDIT OPPORTUNITY

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APPENDIX—OFFICIAL STAFF INTERPRETATIONS

Sec.

APPENDIX A—FEDERAL ENFORCEMENT AGENCIES

APPENDIX B—MODEL APPLICATION FORMS

SUPPLEMENT I—PROCEDURES FOR STATE EXEMPTION

AUTHORITY: Sec. 703 of Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq.

SOURCE: 42 FR 1242, Jan. 6, 1977, unless otherwise noted. Redesignated at 50 FR 48026, Nov. 20, 1985.

EFFECTIVE DATE NOTE: Part 202 was effective on December 16, 1985, but creditors have the option of continuing to comply with this Part 202a (in lieu of Part 202) until October 1, 1986.

§ 202a.1 Authority, scope, enforcement, penalties and liabilities, interpretations.

(a) *Authority and scope.* This part comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to Title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). Except as otherwise provided herein, this part applies to all persons who are creditors, as defined in § 202a.2(1).

(b) *Administrative enforcement.* (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this part regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), Administrator of the National Credit Union Administration, Interstate Commerce Commission, Secretary of Transportation, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, and Small Business Administration.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements imposed under the Act and this part will be enforced by the Federal Trade Commission.

(c) *Penalties and liabilities.* (1) Sections 706(a) and (b) of the Act provide that any creditor who fails to comply with any requirement imposed under the Act, or pursuant to section 702(g), this part is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to section 704 of the Act, violations of the Act or, pursuant to section 702(g), this part constitute violations of other Federal laws that may provide further penalties. Liability for punitive damages is restricted by section 706(b) to non-governmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or one percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief. Section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) Section 706(e) relieves a creditor from civil liability resulting from any act done or omitted in good faith in conformity with any rule, regulation, or interpretation by the Board of Governors of the Federal Reserve System, or with any interpretations or approvals issued by a duly authorized official or employee of the Federal Reserve System, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or otherwise determined to be invalid for any reason.

(3) As provided in section 706(f), a civil action under the Act or this part may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation or within one year after the commencement of an administrative enforcement proceeding or a civil action brought by the Attorney General within two years after the alleged violation.

(4) Section 706 (g) and (h) provide that, if the agencies responsible for administrative enforcement are unable to obtain compliance with the Act, or pursuant to section 702(g), this part, they may refer the matter to the Attorney General. On such referral, or whenever the Attorney General has reason to believe that one or more creditors are engaged in a pattern or

practice in violation of the Act or this part, the Attorney General may bring a civil action.[1]

(d) *Issuance of staff interpretations.* (1) Unofficial staff interpretations will be issued at the staff's discretion where the protection of section 706(e) of the Act is neither requested nor required, or where a rapid response is necessary.

(2)(i) Official staff interpretations will be issued at the discretion of designated officials. No such interpretation will be issued approving creditors' forms or statements. Any request for an official staff interpretation of this part must be in writing and addressed to the Director of the Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request must contain a complete statement of all relevant facts concerning the credit transaction or arrangement and must include copies of all pertinent documents.

(ii) Within 5 business days of receipt of the request, an acknowledgment will be sent to the person making the request. If, in the opinion of the designated officials, issuance of an official staff interpretation is appropriate, it will be published in the FEDERAL REGISTER to become effective 30 days after the publication date. If a request for public comment is received, the effective date will be suspended. The interpretation will then be republished in the FEDERAL REGISTER and the public given an opportunity to comment. Any official staff interpretation issued after opportunity for public comment shall become effective upon publication in the FEDERAL REGISTER.

(3) Any request for public comment on an official staff interpretation of this part must be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, and postmarked or received by the Secretary's office within 30 days of the interpretation's publication in the FEDERAL REGISTER. The request must contain a statement setting forth the reasons why the person making the request believes that public comment would be appropriate.

(4) Pursuant to section 706(e) of the Act, the Board has designated the Director and other officials of the Division of Consumer Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this part.

[43 FR 18540, May 1, 1978; 43 FR 21318, May 17, 1978, as amended at 50 FR 8707, Mar. 5, 1985. Redesignated at 50 FR 48026, Nov. 20, 1985]

§ 202a.2 Definitions and rules of construction.

For the purposes of this part, unless the context indicates otherwise, the following definitions and rules of construction shall apply:[2]

(a) *Account* means an extension of credit. When employed in relation to an account, the word *use* refers only to open end credit.

(b) *Act* means the Equal Credit Opportunity Act (Title VII of the Consumer Credit Protection Act).

(c) *Adverse action.* (1) For the purposes of notification of action taken, statement of reasons for denial, and record retention, the term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested by an applicant unless the creditor offers to grant credit other than in substantially the amount or on substantially the terms requested by the applicant and the applicant uses or expressly accepts the credit offered; or

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of a creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant when the applicant requests an increase in accordance with procedures established by the creditor for the type of credit involved.

(2) The term does not include:

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[1] As used herein, the words "this part" mean Regulation B, 12 CFR Part 202a.

[2] Note that some of the definitions in this part are not identical to those in 12 CFR Part 226 (Regulation Z).

(i) A change in the terms of an account expressly agreed to by an applicant; or

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account; or

(iii) A refusal or failure to authorize an account transaction at a point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of the creditor's accounts or when the refusal is a denial of an application to increase the amount of credit available under the account; or

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section shall be governed by the provisions of paragraph (c)(2) of this section.

(d) *Age* refers only to natural persons and means the number of fully elapsed years from the date of an applicant's birth.

(e) *Applicant* means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may be contractually liable regarding an extension of credit other than a guarantor, surety, endorser, or similar party.

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit. A *completed application for credit* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral); provided, however, that the creditor has exercised reasonable diligence in obtaining such information. Where an application is incomplete respecting matters that the applicant can complete, a creditor shall make a reasonable effort to notify the applicant of the incompleteness and shall allow the applicant a reasonable opportunity to complete the application.

(g) *Board* means the Board of Governors of the Federal Reserve System.

(h) *Consumer credit* means credit extended to a natural person in which the money, property, or service that is the subject of the transaction is primarily for personal, family, or household purposes.

(i) *Contractually liable* means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) *Credit* means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) *Credit card* means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, or services on credit.

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of §§ 202a.4 and 202a.5(a), the term also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the Act or this part committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before its involvement with the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) *Credit transaction* means every aspect of an applicant's dealings with a creditor regarding an application for, or an existing extension of, credit including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures.

(n) *Discriminate against an applicant* means to treat an applicant less favorably than other applicants.

(o) *Elderly* means an age of 62 or older.

(p) *Empirically derived credit system.* (1) The term means a credit scoring system that evaluates an applicant's creditworthiness primarily by allocating points (or by using a comparable basis for assigning weights) to key attributes describing the applicant and other aspects of the transaction. In such a system, the points (or weights) assigned to each attribute, and hence the entire score:

(i) Are derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants of a creditor who applied for credit within a reasonable preceding period of time; and

(ii) Determine, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy.

(2) *A demonstrably and statistically sound, empirically derived credit systcm* is a system:

(i) In which the data used to develop the system, if not the complete population consisting of all applicants, are obtained from the applicant file by using appropriate sampling principles;

(ii) Which is developed for the purpose of predicting the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system, including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment;

(iii) Which, upon validation using appropriate statistical principles, separates creditworthy and non-creditworthy applicants at a statistically significant rate; and

(iv) Which is periodically revalidated as to its predictive ability by the use of appropriate statistical principles and is adjusted as necessary to maintain its predictive ability.

(3) A creditor may use a demonstrably and statistically sound, empirically derived credit system obtained from another person or may obtain credit experience from which such a system may be developed. Any such system must satisfy the tests set forth in paragraphs (p) (1) and (2) of this section; provided that, if a creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (p)(2)(iii) of this section, then the system must be validated when sufficient credit experience becomes available. A system that fails this validity test shall henceforth be deemed not to be a demonstrably and statistically sound, empirically derived credit system for that creditor.

(q) *Extend credit and extension of credit* mean the granting of credit in any form and include, but are not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity.

(r) *Good faith* means honesty in fact in the conduct or transaction.

(s) *Inadvertent error* means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(t) *Judgmental system of evaluating applicants* means any system for evaluating the creditworthiness of an applicant other than a demonstrably and statistically sound, empirically derived credit system.

(u) *Marital status* means the state of being unmarried, married, or separated, as defined by applicable State law. For the purposes of this part, the term "unmarried" includes persons who are single, divorced, or widowed.

(v) *Negative factor or value*, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly applicants and are most favored by a creditor on the basis of age.

(w) *Open end credit* means credit extended pursuant to a plan under which a creditor may permit an applicant to make purchases or obtain loan from time to time directly from the creditor or indirectly by use of a credit card, check, or other device as the plan may provide. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(x) *Person* means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) *Pertinent element of creditworthiness*, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act[3] or any State law upon which an exemption has been granted by the Board.

(aa) *Public assistance program* means any Federal, State, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need. The term includes, but is not limited to, Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation.

(bb) *State* means any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(cc) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the substance of any provision of this part may be drawn from them.

(dd) Footnotes shall have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

[42 FR 1242, Jan. 6, 1977, as amended at 43 FR 11969, Mar. 23, 1978; 44 FR 23814, Apr. 23, 1979. Redesignated at 50 FR 48026, Nov. 20, 1985]

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[3] The first clause of the definition is not limited to characteristics of the applicant. Therefore, "prohibited basis" as used in this part refers not only to the race, color, religion, national origin, sex, marital status, or age of an applicant (or of partners or officers of an applicant), but refers also to the characteristics of individuals with whom an applicant deals. This means, for example, that, under the general rule stated in § 202a.4, a creditor may not discriminate against a non-Jewish applicant because of that person's business dealings with Jews, or discriminate against an applicant because of the characteristics of persons to whom the extension of credit relates (e.g., the prospective tenants in an apartment complex to be constructed with the proceeds of the credit requested), or because of the characteristics of other individuals residing in the neighborhood where the property offered as collateral is located. A creditor may take into account, however, any applicable law, regulation, or executive order restricting dealings with citizens or governments of other countries or imposing limitations regarding credit extended for their use.

The second clause is limited to an applicant's receipt of public assistance income and to an applicant's good faith exercise of rights under the Consumer Credit Protection Act or applicable State law.

§ 202a.3 Special treatment for certain classes of transactions.

(a) *Classes of transactions afforded special treatment.* Pursuant to section 703(a) of the Act, the following classes of transactions are afforded specialized treatment:

(1) Extensions of credit relating to transactions under public utility tariffs involving services provided through pipe, wire, or other connected facilities if the charges for such public utility services, the charges for delayed payment, and any discount allowed for early payment are filed with, or reviewed or regulated by, an agency of the Federal Government, a State, or a political subdivision thereof;

(2) Extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934;

(3) Extensions of incidental consumer credit, other than of the types described in paragraphs (a) (1) and (2) of this section:

(i) That are not made pursuant to the terms of a credit card account;

(ii) On which no finance charge as defined in § 226.4 of this title (Regulation Z, 12 CFR 226.4) is or may be imposed; and

(iii) That are not payable by agreement in more than four installments;

(4) Extensions of credit primarily for business or commercial purposes, including extensions of credit primarily for agricultural purposes, but excluding extensions of credit of the types described in paragraphs (a) (1) and (2) of this section; and

(5) Extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(b) *Public utilities credit.* The following provisions of this part shall not apply to extensions of credit of the type described in paragraph (a) (1) of this section:

(1) Section 202a.5(d)(1) concerning information about marital status;

(2) Section 202a.10 relating to furnishing of credit information; and

(3) Section 202a.12(b) relating to record retention.

(c) *Securities credit.* The following provisions of this part shall not apply to extensions of credit of the type described in paragraph (a)(2) of this section:

(1) Section 202a.5(c) concerning information about a spouse or former spouse;

(2) Section 202a.5(d)(1) concerning information about marital status;

(3) Section 202a.5(d)(3) concerning information about the sex of an applicant;

(4) Section 202a.7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(5) Section 202a.7(c) relating to action concerning open end accounts, but only to the extent the action taken is on the basis of a change of name or marital status;

(6) Section 202a.7(d) relating to signatures of a spouse or other person;

(7) Section 202a.10 relating to furnishing of credit information; and

(8) Section 202a.12(b) relating to record retention.

(d) *Incidental credit.* The following provisions of this part shall not apply to extensions of credit of the type described in paragraph (a)(3) of this section:

(1) Section 202a.5(c) concerning information about a spouse or former spouse;

(2) Section 202a.5(d)(1) concerning information about marital status;

(3) Section 202a.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(4) Section 202a.5(d)(3) concerning information about the sex of an applicant to the extent necessary for medical records or similar purposes;

(5) Section 202a.7(d) relating to signatures of a spouse or other person;

(6) Section 202a.9 relating to notifications;

(7) Section 202a.10 relating to furnishing of credit information; and

(8) Section 202a.12(b) relating to record retention.

(e) *Business credit.* The following provisions of this part shall not apply to extensions of credit of the type described in paragraph (a)(4) of this section:

(1) Section 202a.5(d)(1) concerning information about marital status;

(2) Section 202a.9 relating to notifications, unless an applicant, within 30 days after oral or written notification that adverse action has been taken, requests in writing the reasons for such action;

(3) Section 202a.10 relating to furnishing of credit information; and

(4) Section 202a.12(b) relating to record retention, unless an applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application be retained.

(f) *Governmental credit.* Except for § 202a.1 relating to authority, scope, enforcement, penalties and liabilities, and interpretation, § 202a.2 relating to definitions and rules of construction, this section, § 202a.4 relating to the general rule prohibiting discrimination, § 202a.6(a) relating to the use of information, § 202a.11 relating to State laws, and § 202a.12(a) relating to the retention of prohibited information, the provisions of this part shall not apply to extensions of credit of the type described in paragraph (a)(5) of this section.

§ 202a.4 General rules prohibiting discrimination.

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

§ 202a.5 Rules concerning applications.

(a) *Discouraging applications.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) *General rules concerning requests for information.* (1) Except as otherwise provided in this section, a creditor may request any information in connection with an application.[4]

(2) Notwithstanding any other provision of this section, a creditor shall request an applicant's race/national origin, sex, and marital status as required in § 202a.13 (information for monitoring purposes). In addition, a creditor may obtain such information as may be required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General or a similar State official) to monitor or enforce compliance with the Act, this part, or other Federal or State statute or regulation.

(3) The provisions of this section limiting permissible information requests are subject to the provisions of § 202a.7(e) regarding insurance and § 202a.8 (c) and (d) regarding special purpose credit programs.

(c) *Information about a spouse or former spouse.* (1) Except as permitted in this subsection, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph (c) (2) (v) of this section) that may be requested about the applicant if:

(i) The spouse will be permitted to use the account; or

(ii) The spouse will be contractually liable upon the account; or

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested; or

(iv) The applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a State; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

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[4] This subsection is not intended to limit or abrogate any Federal or State law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information. Furthermore, permission to request information should not be confused with how it may be utilized, which is governed by § 202a.6 (rules concerning evaluations of applications).

(3) A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which such account is carried. A creditor may also ask the names in which an applicant has previously received credit.

(d) *Information a creditor may not request.* (1) If an applicant applies for an individual, unsecured account, a creditor shall not request the applicant's marital status, unless the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a State.[5] Where an application is for other than individual, unsecured credit, a creditor may request an applicant's marital status. Only the terms "married," "unmarried," and "separated" shall be used, and a creditor may explain that the category "unmarried" includes single, divorced, and widowed persons.

(2) A creditor shall not inquire whether any income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor appropriately discloses to the applicant that such income need not be revealed if the applicant does not desire the creditor to consider such income in determining the applicant's creditworthiness. Since a general inquiry about income, without further specification, may lead an applicant to list alimony, child support, or separate maintenance payments, a creditor shall provide an appropriate notice to an applicant before inquiring about the source of an applicant's income, unless the terms of the inquiry (such as an unquiry about salary, wages, investment income, or similarly specifed income) tend to preclude the unintentional disclosure of alimony, child support, or separate maintenance payments.

(3) A creditor shall not request the sex of an applicant. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form appropriately discloses that the designation of such a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) A creditor shall not request information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. This does not preclude a creditor from inquiring about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(5) A creditor shall not request the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire, however, as to an applicant's permanent residence and immigration status.

(e) *Application forms.* A creditor need not use written applications. If a creditor chooses to use written forms, it may design its own,[6] use forms prepared by another person, or use the appropriate model application forms contained in Appendix B. If a creditor chooses to use an Appendix B form, it may change the form:

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[5] This provision does not preclude requesting relevant information that may indirectly disclose marital status, such as asking about liability to pay alimony, child support, or separate maintenance; the source of income to be used as a basis for the repayment of the credit requested, which may disclose that it is a spouse's income; whether any obligation disclosed by the applicant has a co-obligor, which may disclose that the co-obligor is a spouse or former spouse; or the ownership of assets, which may disclose the interest of a spouse, when such assets are relied upon in extending the credit. Such inquiries are allowed by the general rule of paragraph (b)(1) of this section.

[6] A creditor also may continue to use any application form that complies with the requirements of the October 28, 1975 version of Regulation B until its present stock of those forms is exhausted or until March 23, 1978, whichever occurs first. The provisions of this part shall not determine and are not evidence of the meaning of the requirements of the previous version of Regulation B.

(1) By asking for additional information not prohibited by this section;

(2) By deleting any information request; or

(3) By rearranging the format without modifying the substance of the inquiries; provided that in each of these three instances the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries are included in the appropriate places if the items to which they relate appear on the creditor's form. If a creditor uses an appropriate Appendix B model form or to the extent that it modifies such a form in accordance with the provisions of clauses (2) or (3) of the preceding sentence or the instructions to Appendix B, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs (c) and (d) of this section.

§ 202a.6 Rules concerning evaluation of applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the Act and this part, a creditor may consider in evaluating an application any information that the creditor obtains, so long as the information is not used to discriminate against an applicant on a prohibited basis.[7]

(b) *Specific rules concerning use of information.* (1) Except as provided in the Act and this part, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.[8]

(2)(i) Except as permitted in this section, a creditor shall not take into account an applicant's age (*Provided,* That the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In a demonstrably and statistically sound, empirically derived credit system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.[9]

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[7] The legislative history of the Act indicates that the Congress intended an "effects test" concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness. See Senate Report to accompany H.R. 6516, No. 94-589, pp. 4-5; House Report to accompany H.R. 6516, N. 94-210, p. 5.

[8] This provision does not prevent a creditor from considering the marital status of an applicant or the source of an applicant's income for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness. Furthermore, a prohibited basis may be considered in accordance with § 202a.8 (special purpose credit programs).

[9] Concerning income derived from a public assistance program, a creditor may consider, for example, the length of time an applicant has been receiving such income; whether an applicant intends to continue to reside in the jurisdiction in relation to residency requirements for benefits; and the status of an applicant's dependents to ascertain whether benefits that the applicant is presently receiving will continue.

Concerning age, a creditor may consider, for example, the occupation and length of time to retirement of an applicant to ascertain whether the applicant's income (including retirement income, as applicable) will support the extension of credit until its maturity; or the adequacy of any security offered if the duration of the credit extension will exceed the life expectancy of the applicant. An elderly applicant might not qualify for a five-percent down, 30-year mortgage loan because the duration of the loan exceeds the applicant's life expectancy and the cost of realizing on the collateral might exceed the applicant's equity. The same applicant might qualify with a larger downpayment and a shorter loan maturity. A creditor could also consider an applicant's age, for example to assess the significance of the applicant's length of employment or residence (a young applicant may have just entered the job market; an elderly applicant may recently have retired and moved from a long-time residence).

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is to be used to favor the elderly applicant in extending credit.

(3) A creditor shall not use, in evaluating the creditworthiness of an applicant, assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or, for that reason, will receive diminished or interrupted income in the future.

(4) A creditor shall not take into account the existence of a telephone listing in the name of an applicant for consumer credit. A creditor may take into account the existence of a telephone in the residence of such an applicant.

(5) A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of the applicant because of a prohibited basis or because the income is derived from part-time employment or from an annuity, pension, or other retirement benefit; but a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. Where an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, a creditor shall consider such payments as income to the extent that they are likely to be consistently made. Factors that a creditor may consider in determining the likelihood of consistent payments include, but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor where available to the creditor under the Fair Credit Reporting Act or other applicable laws.

(6) To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness, a creditor shall consider (unless the failure to consider results from an inadvertent error):

(i) The credit history, when available, of accounts designated as accounts that the applicant and a spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information that the applicant may present tending to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant creditworthiness.

(7) A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and such additional information as may be necessary to ascertain its rights and remedies regarding repayment.

(c) *State property laws.* A creditor's consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute unlawful discrimination for the purposes of the Act or this part.

§ 202a.7 Rules concerning extensions of credit.

(a) *Individual accounts.* A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) *Designation of name.* A creditor shall not prohibit an applicant from opening or maintaining an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) *Action concerning existing open end accounts.* (1) In the absence of evidence of inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open end account on the basis of the applicant's reaching a certain age or retiring, or on the basis of a change in the applicant's name or marital status:

(i) Require a reapplication; or

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2) A creditor may require a reapplication regarding an open end account on the basis of a change in an applicant's marital status where the credit granted was based on income earned by the applicant's spouse if the applicant's income alone at the time of the original application would not support the amount of credit currently extended.

(d) *Signature of spouse or other person.* (1) Except as provided in this subsection, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.

(2) If an applicant requests unsecured credit and relies in part upon property to establish creditworthiness, a creditor may consider State law; the form of ownership of the property; its susceptibility to attachment, execution, severance, and partition; and other factors that may affect the value to the creditor of the applicant's interest in the property. If necessary to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property relied upon available to satisfy the debt in the event of default.

(3) If a married applicant requests unsecured credit and resides in a community property State or if the property upon which the applicant is relying is located in such a State, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable State law denied the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to community property.

(4) If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property being offered as security available to satisfy the debt in the event of default, for example, any instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested,[10] a creditor may request that the applicant obtain a co-signer, guarantor, or the like. The applicant's spouse may serve as an additional party, but a creditor shall not require that the spouse be the additional party. For the purposes of paragraph (d) of this section, a creditor shall not impose requirements upon an additional party that the creditor may not impose upon an applicant.

(e) *Insurance.* Differentiation in the availability, rates, and terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant shall not constitute a violation of the Act or this part; but a creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, or disability insurance is not available on the basis of the applicant's age. Notwithstanding any other provision of this part, information about the age, sex, or marital status of an applicant may be requested in an application for insurance.

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[10] If an applicant requests individual credit relying on the separate income of another person, a creditor may require the signature of the other person to make the income available to pay the debt.

§ 202a.8 Special purpose credit programs.

(a) *Standards for programs.* Subject to the provisions of paragraph (b) of this section, the Act and this part are not violated if a creditor refuses to extend credit to the applicant solely because the applicant does not qualify under the special requirements that define eligibility for the following types of special purpose credit programs:

(1) Any credit assistance program expressly authorized by Federal or State law for the benefit of an economically disadvantaged class of persons; or

(2) Any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a for-profit organization or in which such an organization participates to meet special social needs, provided that:

(i) The program is established and administered pursuant to a written plan that (A) identifies the class or classes of persons that the program is designed to benefit and (B) sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) The program is established and administered to extend credit to a class of persons who, pursuant to the customary standards of creditworthiness used by the organization extending the credit, either probably would not receive such credit or probably would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) *Applicability of other rules.* (1) All of the provisions of this part shall apply to each of the special purpose credit programs described in paragraph (a) of this section to the extent that those provisions are not inconsistent with the provisions of this section.

(2) A program described in paragraph (a)(2) or (a)(3) of this section shall qualify as a special purpose credit program under paragraph (a) of this section only if it was established and is administered so as not to discriminate against an applicant on the basis of race, color, religion, national origin, sex, marital status, age (*Provided,* That the applicant has the capacity to enter into a binding contract), income derived from a public assistance program, or good faith exercise of any right under the Consumer Credit Protection Act or any State law upon which an exemption has been granted therefrom by the Board; except that all program participants may be required to share one or more of those characteristics so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this part.

(c) *Special rule concerning requests and use of information.* If all participants in a special purpose credit program described in paragraph (a) of this section are or will be required to possess one or more common characteristics relating to race, color, religion, national origin, sex, marital status, age, or receipt of income from a public assistance program and if the special purpose credit program otherwise satisfies the requirements of paragraph (a) of this section, then, notwithstanding the prohibitions of §§ 202a.5 and 202a.6, the creditor may request of an applicant and may consider, in determining eligibility for such program, information regarding the common characteristics required for eligibility. In such circumstances, the solicitation and consideration of that information shall not constitute unlawful discrimination for the purposes of the Act or this part.

(d) *Special rule in the case of financial need.* If financial need is or will be one of the criteria for the extension of credit under a special purpose credit program described in paragraph (a) of this section, then, notwithstanding the prohibitions of §§ 202a.5 and 202a.6, the creditor may request and consider, in determining eligibility for such program, information regarding an applicant's marital status, income from alimony, child support, or separate maintenance, and the spouse's financial resources. In addition, notwithstanding the prohibitions of § 202a.7(d), a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if required by Federal of State law. In such circumstances, the solicitation and consideration of that information and the obtaining of a required signature shall not constitute unlawful discrimination for the purposes of the Act or this part.

§ 202a.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons*—(1) *Notification of action taken.* A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, or adverse action regarding, the application (notification of approval may be expressed by implication, where, for example, the applicant receives a credit card, money, property, or services in accordance with the application);

(ii) 30 days after taking adverse action on an uncompleted application;

(iii) 30 days after taking adverse action regarding an existing account; and

(iv) 90 days after the creditor has notified the applicant of an offer to grant credit other than in substantially the amount or on substantially the terms requested by the applicant if the aplicant during those 90 days has not expressly accepted or used the credit offered.

(2) *Content of notification.* Any notification given to an applicant against whom adverse action taken shall be in writing and shall contain: a statement of the action taken; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance concerning the creditor giving the notification; and

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days of such notification, the disclosure to include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the statement of reasons orally, the notification shall also include a disclosure of the applicant's right to have any oral statement of reasons confirmed in writing within 30 days after a written request for confirmation is received by the creditor.

(3) *Multiple applicants.* If there is more than one applicant, the notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(4) *Multiple creditors.* If a transaction involves more than one creditor and the applicant expressly accepts or uses the credit offered, this section does not require notification of adverse action by any creditor. If a transaction involves more than one creditor and either no credit is offered or the applicant does not expressly accept or use any credit offered, then each creditor taking adverse action must comply with this section. The required notification may be provided indirectly through a third party, which may be one of the creditors, provided that the identity of each creditor taking adverse action is disclosed. Whenever the notification is to be provided through a third party, a creditor shall not be liable for any act or omission of the third party that constitutes a violation of this section if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and was maintaining procedures reasonably adapted to avoid any such violation.

(b) *Form of ECOA notice and statement of specific reasons*—(1) *ECOA notice.* A creditor satisfies the requirements of paragraph (a)(2) of this section regarding a statement of the provisions of section 701(a) of the Act and the name and address of the appropriate Federal enforcement agency if it provides the following notice, or one that is substantially similar:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

The sample notice printed above may be modified immediately following the required references to the Federal Act and enforcement agency to include references to any similar State statute or regulation and to a State enforcement agency.

(2) *Statement of specific reasons.* A statement of reasons for adverse action shall be sufficient if it is specific and indicates the principal reason(s) for the adverse action. A creditor may formulate its own statement of reasons in checklist or letter form or may use all or a portion of the sample form printed below, which, if properly completed, satisfies the requirements of paragraph (a)(2)(i) of this section. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

STATEMENT OF CREDIT DENIAL, TERMINATION, OR CHANGE

Date———

Applicant's Name: ———

Applicant's Address: ———

———

Description of Account, Transaction, or Requested Credit:

———

———

Description of Adverse Action Taken:

———

———

PRINCIPAL REASON(S) FOR ADVERSE ACTION CONCERNING CREDIT

☐ Credit application incomplete
☐ Insufficient credit references
☐ Unable to verify credit references
☐ Temporary or irregular employment
☐ Unable to verify employment
☐ Length of employment
☐ Insufficient income
☐ Excessive obligations
☐ Unable to verify income
☐ Inadequate collateral
☐ We do not grant credit to any applicant on the terms and conditions you request.
☐ Too short a period of residence
☐ Temporary residence
☐ Unable to verify residence
☐ No credit file
☐ Insufficient credit file
☐ Delinquent credit obligations
☐ Garnishment, attachment, foreclosure, repossession, or suit
☐ Bankruptcy
☐ Other specify: ———

DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE

☐ Disclosure inapplicable

☐ Information obtained in a report from a consumer reporting agency

Name: ———

———

Street Address: ———

———

Phone: ———

☐ Information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, within 60 days of receipt of this notice, for disclosure of the nature of the adverse information.

Creditor's name: ———

Creditor's address: ———

———

Creditor's telephone number: ———

[Add ECOA Notice]

(3) *Other information.* The notification required by paragraph (a)(1) of this section may include other information so long as it does not detract from the required content. This notification also may be combined with any disclosures required under other titles of the Consumer Credit Protection Act or any other law, provided that all requirements for clarity and placement are satisfied; and it may appear on either or both sides of the paper if there is a clear reference on the front to any information on the back.

(c) *Oral notifications.* The applicable requirements of this section are satisfied by oral notifications (including statements of specific reasons) in the case of any creditor that did not receive more than 150 applications during the calendar year immediately preceding the calendar year in which the notification of adverse action is to be given to a particular applicant.

(d) *Withdrawn applications.* Where an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, then the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

(e) *Failure of compliance.* A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

(f) *Notification.* A creditor notifies an applicant when a writing addressed to the applicant is delivered or mailed to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicants.

§ 202a.10 Furnishing of credit information.

(a) *Accounts established on or after June 1, 1977.* (1) For every account established on or after June 1, 1977, a creditor that furnishes credit information shall:

(i) Determine whether an account offered by the creditor is one that an applicant's spouse is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties; and

(ii) Designate any such account to reflect the fact of participation of both spouses;[11]

(2) Except as provided in paragraph (a)(3) of this section, if a creditor furnishes credit information concerning an account designated under this section (or designated prior to the effective date of this part) to a consumer reporting agency, it shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(3) If a creditor furnishes credit information concerning an account designated under this section (or designated prior to the effective date of this part) in response to an inquiry regarding a particular applicant, it shall furnish the information in the name of the spouse about whom such information is requested.[12]

(b) *Accounts established prior to June 1, 1977.* For every account established prior to and in existence on June 1, 1977, a creditor that furnishes credit information shall either:

(1) Not later than June 1, 1977

(i) Determine whether the account is one that an applicant's spouse, if any, is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties;

(ii) Designate any such account to reflect the fact of participation of both spouses:[13] and

(iii) Comply with the reporting requirements of paragraphs (a)(2) and (a)(3) of this section; or

(2) Mail or deliver to all applicants, or all married applicants, in whose name an account is carried on the creditor's records one copy of the notice set forth below.[14] The notice may be mailed with a billing statement or other mailing. All such notices shall be mailed or delivered by October 1, 1977. As to open end accounts, this requirement may be satisfied by mailing one notice at any time prior to October 2, 1977, regarding each account for which a billing statement is sent between June 1 and October 1, 1977. The notice may be supplemented as necessary to permit identification of the account by the creditor or by a consumer reporting agency. A

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[11] A creditor need not distinguish between participation as a user or as a contractually liable party.

[12] If a creditor learns that new parties have undertaken payment on an account, then the subsequent history of the account shall be furnished in the names of the new parties and need not continue to be furnished in the names of the former parties.

[13] See footnote 11.

[14] A creditor may delete the references to the "use" of an account when providing notices regarding closed end accounts.

creditor need only send notices relating to those accounts on which it lacks the information necessary to make the proper designation regarding participation or contractual liability.

NOTICE

CREDIT HISTORY FOR MARRIED PERSONS

The Federal Equal Credit Opportunity Act prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided that a person has the capacity to enter into a binding contract); because all or part of a person's income derives from any public assistance program; or because a person in good faith has exercised any right under the Federal Consumer Credit Protection Act. Regulations under the Act give married persons the right to have credit information included in credit reports in the name of both the wife and the husband if both use or are responsible for the account. This right was created, in part, to insure that credit histories will be available to women who become divorced or widowed.

If your account with us is one that both husband and wife signed for or is an account that is being used by one of you who did not sign, then you are entitled to have us report credit information relating to the account in both your names. If you choose to have credit information concerning your account with us reported in both your names, please complete and sign the statement below and return it to us.

Federal regulations provide that signing your name below will not change your or your spouse's legal liability on the account. Your signature will only request that credit information be reported in both your names.

If you do not complete and return the form below, we will continue to report your credit history in the same way that we do now.

When you furnish credit information on this account, please report all information concerning the account in both our names.

____
Account number

____
Print or type name

____
Print or type name

____
Signature of either spouse

(c) *Requests to change manner in which information is reported.* Within 90 days after receipt of a properly completed request to change the manner in which information is reported to consumer reporting agencies and others regarding an account described in paragraph (b) of this section a creditor shall designate the account to reflect the fact of participation of both spouses.[15] When furnishing information concerning any such account, the creditor shall comply with the reporting requirements of subparagraphs (a)(2) and (a)(3) of this section. The signature of an applicant or the applicant's spouse on a request to change the manner in which information concerning an account is furnished shall not alter the legal liability of either spouse upon the account or require the creditor to change the name in which the account is carried.

(d) *Inadvertent errors.* A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; *Provided,* That, on discovering the error the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

§ 202a.11 Relation to State law.

(a) *Inconsistent State laws.* Except as otherwise provided in this section, this part alters, affects, or preempts only those State laws that are inconsistent with this part and then only to the extent of the inconsistency. A State law is not inconsistent with this part if it is more protective of an applicant.

(b) *Preempted provisions of State law.* (1) State law is deemed to be inconsistent with the requirements of the Act and this part and less protective of an applicant within the meaning of section 705(f) of the Act to the extent that such law:

(i) Requires or permits a practice or act prohibited by the Act or this part;

(ii) Prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;

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[15] See footnote 11.

(iii) Prohibits inquiries or collection of data required to comply with the Act or this part;

(iv) Prohibits asking age or considering age in a demonstrably and statistically sound, empirically derived credit system, to determine a pertinent element of creditworthiness, or to favor an elderly applicant; or

(v) Prohibits inquiries necessary to establish or administer a special purpose credit program as defined by § 202a.8.

(2) A determination as to whether a State law is inconsistent with the requirements of the Act and this part will be made only in response to a request for a formal Board interpretation. All requests for such interpretations, in addition to meeting the requirements of § 202a.1(d), shall comply with the applicable provisions of subsections (b) (1) and (2) of Supplement I to this part. A determination shall be based on the factors enumerated in this subsection and, as applicable, subsection (c) of Supplement I. Notice of the interpretation shall be provided as specified in subsection (e)(1) of Supplement I, but the interpretation shall be effective in accordance with § 202a.1. The interpretation shall be subject shall be subject to revocation or modification at any time, as provided in subsection (g)(4) of Supplement I.

(c) *Finance charges and loan ceilings.* If married applicants voluntarily apply for and obtain individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under any Federal or State law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.[16]

(d) *State and Federal laws not affected.* This section does not alter or annul any provision of State property laws, laws relating to the disposition of decedents' estates, or Federal or State banking regulations directed only towards insuring the solvency of financial institutions.

(e) *Exemption for State regulated transactions.* (1) In accordance with the provisions of Supplement I to this part, any State may apply to the Board for an exemption from the requirements of sections 701 and 702 of the Act and the corresponding provisions of this part for any class of credit transactions within the State. The Board will grant such an exemption if:

(i) The Board determines that, under the law of that State, that class of credit transactions is subject to requirements substantially similar to those imposed under sections 701 and 702 of the Act and the corresponding provisions of this part, or that applicants are afforded greater protection than is afforded under sections 701 and 702 of the Act and the corresponding provisions of this part; and

(ii) There is adequate provision for State enforcement.

(2) In order to assure that the concurrent jurisdiction of Federal and State courts created in section 706(f) of the Act will continue to have substantive provisions to which such jurisdiction shall apply; to allow Federal enforcement agencies to retain their authority regarding any class of credit transactions exempted pursuant to paragraph (e)(1) of this section and Supplement I; and, generally, to aid in implementing the Act:

(i) No such exemption shall be deemed to extend to the civil liability provisions of section 706 or the administrative enforcement provisions of section 704 of the Act; and

(ii) After an exemption has been granted, the requirements of the applicable State law shall constitute the requirements of the Act and this part, except to the extent such State law imposes requirements not imposed by the Act or this part.

(3) Exemptions granted by the Board to particular classes of credit transactions within specified States will be set forth in Supplement II to this part.

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[16] For example, in a State with a permissible loan ceiling of $1,000, if a married couple were jointly liable for unpaid debt in the amount of $250, each spouse could subsequently become individually liable for $750.

§ 202a.12 Record retention.

(a) *Retention of prohibited information.* Retention in a creditor's files of any information, the use of which in evaluating applications is prohibited by the Act or this part, shall not constitute a violation of the Act or this part where such information was obtained:

(1) From any source prior to March 23, 1977;[17] or

(2) At any time from consumer reporting agencies; or

(3) At any time from any applicant or others without the specific request of the creditor; or

(4) At any time as required to monitor compliance with the Act and this part or other Federal or State statutes or regulations.

(b) *Preservation of records.* (1) For 25 months after the date that a creditor notifies an applicant of action taken on an application, the creditor shall retain as to that application in original form or a copy thereof:[18]

(i) Any application form that it receives, any information required to be obtained concerning characteristics of an applicant to monitor compliance with the Act and this part or other similar law, and any other written or recorded information used in evaluating the application and not return to the applicant at the applicant's request;

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum with respect thereto made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this part.

(2) For 25 months after the date that a creditor notifies an applicant of adverse action regarding an account, other than in connection with an application, the creditor shall retain as to that account, in original form or a copy thereof:[19]

(i) Any written or recorded information concerning such adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the Act or this part.

(3) In addition to the requirements of paragraphs (b) (1) and (2), of this section, any creditor that has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this part by an enforcement agency charged with monitoring that creditor's compliance with the Act and this part, or that has been served with notice of an action filed pursuant to section 706 of the Act and § 202a.1(b) or (c) of this part, shall retain the information required in paragraphs (b)(1) and (2) of this section until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(4) In any transaction involving more than one creditor, any creditor not required to comply with § 202a.9 (notifications) shall retain for the time period specified in paragraph (b) of this section all written or recorded information in its possession concerning the applicant, including a notation of action taken in connection with any adverse action.

(c) *Failure of compliance.* A failure to comply with this section shall not constitute a violation when caused by an inadvertent error.

§ 202a.13 Information for monitoring purposes.

(a) *Scope and information requested.* (1) For the purpose of monitoring compliance with the provisions of the Act and this part, any creditor that receives an application for consumer credit relating to the purchase of residential real property, where the extension of credit is to be secured by a lien on such property, shall request as part of any written application for such credit the following information regarding the applicant and joint applicant (if any):

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[17] Pursuant to the October 28, 1975 version of Regulation B, the applicable date for sex and marital status information is June 30, 1976.

[18] "A copy thereof" includes carbon copies, photocopies, microfilm or microfiche copies or copies produced by any accurate information retrieval system. A creditor who uses a computerized or mechanized system need not keep a written copy of a document if it can regenerate the precise text of the document upon request.

[19] See footnote 18.

(i) Race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (Specify);

(ii) Sex;

(iii) Marital status, using the categories married, unmarried, and separated; and

(iv) Age.

(2) "Residential real property" means improved real property used or intended to be used for residential purposes, including single family homes, dwellings for from two to four families, and individual units of condominiums and cooperatives.

(b) *Method of obtaining information.* Questions regarding race/national origin, sex, marital status, and age may be listed at the creditor's option, either on the application form or on a separate form that refers to the application.

(c) *Disclosure to applicant and joint applicant.* The applicant and joint applicant (if any) shall be informed that the information regarding race/national origin, sex, marital status, and age is being requested by the Federal government for the purpose of monitoring compliance with Federal antidiscrimination statutes and that those statutes prohibit creditors from discriminating against applicants on those bases. The applicant and joint applicant shall be asked, but not required, to supply the requested information. If the applicant or joint applicant chooses not to provide the information or any part of it, that fact shall be noted on the form on which the information is obtained.

(d) *Substitute monitoring program.* Any monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in paragraphs (a), (b) and (c) of this section.

INTERPRETATIONS

§ 202a.601 Consideration of income.

(a) Regulation B prohibits creditors from discounting or excluding the income of an applicant (or the spouse of the applicant) from consideration because of a prohibited basis or because the income is derived from alimony, child support, separate maintenance, part-time employment, retirement benefits or public assistance ("protected income").[1] A creditor may consider, however, the probability of any income continuing in evaluating an applicant's credit worthiness, and may consider the extent to which alimony, child support or separate maintenance is likely to be consistently made. Regulation B applies equally to all methods of credit evaluation—whether performed judgmentally or through the use of a credit scoring system.[2]

(b) Creditors need not consider income at all. However, creditors that do consider income should consider the amount of income as required in

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[1] Section 202a.6(b)(5) states in relevant part:

A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of the applicant because of a prohibited basis or because the income is derived from part-time employment, or from an annuity, pension, or other retirement benefit; but a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. Where an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, a creditor shall consider such payments as income to the extent that they are likely to be consistently made. Factors that a creditor may consider in determining the likelihood of consistent payments include, but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor * * *.

[2] The only differences in evaluation procedures for the two methods of judging creditworthiness sanctioned by the law relate to consideration of age and receipt of public assistance. (See § 202a.6(b)(2)(ii) and (iii).)

§ 202a.6(b)(5). A credit scoring system[3] will not be deprived of its status as a "demonstrably and statistically sound, empirically derived" credit scoring system because it aggregates income (including a type of income which, by itself, would not be selected as a predictive characteristic).

(c) Creditors have asked whether evaluating or deriving a point score for certain types of income (such as Social Security and alimony) during the development of the system constitutes "consideration" of that income for purposes of the regulation, enabling the creditor to discount or exclude such income based upon these aggregate statistics. In the Board's view, the statute requires that evaluation of protected income be made on an individual basis, and not based upon aggregate statistical relationships such as those underlying credit scoring models. Thus, creditors may not use blanket rules which automatically deem a certain type of protected income to be unreliable and therefore a predictor of adverse credit performance. Nor may the average reliability of a particular type of protected income be used to predict the reliability of the same types of income for an individual applicant.

(d) For creditors that do consider income, there are several acceptable methods under § 202a.6(b)(5) which creditors using credit scoring systems may use for this purpose. First, creditors can score the amount of all income stated by the applicant without taking steps to evaluate the income. This method could be used in a system which is based on the income the applicant states; the creditor need not actually verify the amount. Second, based on an individual evaluation of each component of the applicant's income, the creditor may score reliable income separately from income that is not reliable. Alternatively, the creditor may include a portion or disregard a portion of income to the extent that it is not reliable, before aggregating and scoring all reliable income. Third, if the creditor does not evaluate all income components, any component of protected income that is not evaluated must be treated as reliable. In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any income of a type protected by § 202a.6(b)(5).

(e) Creditors have asked whether credit scoring systems may place values on the number of sources from which earned income is received without violating the regulation's prohibition against discounting income. Although creditors may not take into account the number of sources for any applicant of income that is not earned, e.g., retirement income, social security, or alimony, the regulation does not prohibit consideration of the number of earned income sources for an individual applicant. For example, a creditor may take into account the fact that an individual applicant has more than one source of *earned income*—a full-time and a part-time job, or two part-time jobs. Alternatively, a creditor might score an individual applicant's earned income from a secondary source differently than the applicant's earned income from a primary source. Creditors may not, however, treat as an adverse factor the fact that an individual applicant's only source of earned income is derived from a part-time job.

[47 FR 46076, Oct. 15, 1982. Redesignated at 50 FR 48026, Nov. 20, 1985]

§ 202a.801 Special purpose credit program may be authorized by law or lawfully promulgated regulation. Participating creditors will not violate Regulation B by complying with regulations implementing special purpose credit programs.

(a) In order to provide guidance concerning the intended coverage of § 202a.8(a)[1] of Regulation B, the

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[3] For the purposes of this interpretation, "credit scoring system" refers to any mechanical method of making a credit decision that is developed using statistical methods and empirical data.

[1] Standards for programs. Subject to the provisions of subsection (b), the Act and this part are not violated if a creditor refuses to extend credit to an applicant solely

Continued

Board interprets a term used in that section as follows: A credit program is considered to be "expressly authorized by Federal or State law" if it is authorized by the terms of a Federal or State statute or by a regulation lawfully promulgated by the administering agency (i.e., the agency responsible for implementing the program).

(b) It is the responsibility of the administering agency to ensure that implementing regulations are consistent with applicable Federal and State law. A creditor participating in a loan program expressly authorized by Federal or State law will not violate Regulation B by complying in good faith with the law authorizing a program or with a regulation promulgated by an administering agency to implement a program that the agency has determined is a special purpose credit program under § 202a.8a(1) of Regulation B.

(c) In addition, the Board announces that it will not make determinations as to whether particular programs benefit an "economically disadvantaged class of persons." The Board believes that such a determination is more properly made by the agency charged with the administration of the loan program.

[42 FR 40424, Aug. 10, 1977. Redesignated at 50 FR 48026, Nov. 20, 1985]

§ 202a.901 Disclosure of reasons for adverse action.

(a) The Board has been asked for an interpretation of § 202a.9 of Regulation B regarding the selection and disclosure of the reasons for adverse action [1] where a credit scoring system [2] is used, alone or in conjunction with a judgmental evaluation. Although the issue has arisen in the context of credit scoring, as a general principle the provisions of Regulation B apply equally to both judgmental and credit scoring systems of credit evaluation. The reasons for adverse action disclosed under § 202a.9 (a)(2) and (b)(2) must relate to factors actually scored or considered by the creditor. The creditor must disclose the specific reason or reasons for the adverse action.

(b) Many credit decision methods contain features that call for automatic adverse action because of one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, a declaration of bankruptcy, or the fact that the applicant is a minor) that cannot be offset by other factors. When a creditor takes adverse action because of an automatic factor, the creditor must disclose that specific factor.

(c) If the creditor does not automatically reject the application, and bases the decision on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system, not to factors that are not included in the credit scoring system. Similarly, in a judgmental system, the reasons disclosed must relate to the factors in the applicant's record actually reviewed by the person making the decision and must accurately describe the reasons for ad-

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because the applicant does not qualify under the special requirements that define eligibility for the following types of special purpose credit programs: (1) Any credit assistance program expressly authorized by Federal or State law for the benefit of an economically disadvantaged class of persons.

[1] Section 202a.9(a)(2) states in relevant part:

"Any notification given to an applicant against whom adverse action is taken shall be in writing and shall contain * * * a statement of specific reasons for the action taken."

Section 202a.9(b)(2) states in relevant part:

"A statement of reasons for adverse action shall be sufficient if it is specific and indicates the principal reason(s) for the adverse action. A creditor may formulate its own statement of reasons in check list or letter form or may use all or a portion of the sample form printed [in this subsection], which, if properly completed, satisfies the requirements of subsection (a)(2)(i). Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient."

[2] For the purposes of this interpretation, "credit scoring system" refers to any mechanical method of making a credit decision that is developed using statistical methods and empirical data.

verse action. If the credit evaluation system employs both judgmental and credit scoring components, the reasons to be disclosed will be determined by whether the final decision resulted from the judgmental or the scoring system assessment of the application. Thus, if the creditor initially credit scores an application and takes adverse action as a result of that scoring, the reasons for adverse action must relate only to the factors actually scored in the system. If the application passes the credit scoring stage successfully but the creditor then takes adverse action based on the judgmental assessment, one or more of the reasons disclosed must relate to the factors in the applicant's record that were reviewed judgmentally.

(d) The regulation does not require that any one method be used for selecting reasons for the adverse credit decision, nor does it mandate that a specific number of reasons be disclosed. However, disclosure of more than four reasons is not likely to be helpful to the applicant. The Board recognizes that there may be a number of valid methods for selection of reasons for denial which meet the requirements of Regulation B. One method, for example, would be to identify those factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score.[3] Another method would be to identify those factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be developed periodically during the use of the system or during the development of the system. Any other method that produces results substantially similar to either of these methods would be acceptable under the regulation.

(e) Creditors may identify reasons for adverse action by mathematical or manual selection. No factor or factors may be arbitrarily excluded from the pool of factors subject to disclosure. The creditor must disclose reasons actually considered (such as "age of automobile") even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

(f) Creditors have also asked about proper use of the sample form set forth in § 202a.9(b)(2) when providing reasons for adverse action. The sample form is illustrative and may not be appropriate for all creditors. It was designed to disclose those factors which creditors most commonly consider. Some of the reasons listed on the form could be misleading when compared to the factors actually scored. In such cases, it is improper to complete the form by simply checking the closest identifiable factor listed. For example, a creditor that considers only bank references (and disregards finance company references altogether) should disclose "insufficient bank references" (not "insufficient credit references"). Similarly, a creditor that considers bank references and other credit references as separate factors should treat the two factors separately in disclosing reasons. The creditor should either add those other factors to the form or check "other" and include the appropriate explanation. In providing reasons for adverse action, creditors need not describe how or why a factor adversely affected an applicant. For example, the notice may say "length of residence" rather than "too short a period of residence."

[47 FR 46076, Oct. 15, 1982. Redesignated at 50 FR 48026, Nov. 20, 1985]

§ 202a.1101 California law requiring delivery of notices to unmarried cosigners is not consistent with Equal Credit Opportunity Act.

(a) The Board has been asked to determine whether certain provisions of the California Civil Code are inconsistent with the Federal Equal Credit Opportunity Act (the ECOA) and Regulation B. The ECOA preempts those State laws that are inconsistent with it, unless the State law provides greater protection to the applicant. Section 202a.11(b)(1) of Regulation B further defines the statutory preemption standard by listing five types of State law that are deemed inconsistent and less protective of an applicant. The Board has determined, as more fully discussed below, that the notification and Spanish-language translation requirements of sections 1799.90–1799.96 and 1632 of the California Civil Code are not inconsistent with the Act and Regulation B.

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[3] For example, if a scoring system with a maximum score of 300 points has a cut-off score of 200 points, the creditor could use applicants whose total scores fall between 200 and, for example, 205 points to determine the average score for those factors.

(b) California Civil Code sections 1799.90–1799.96 require that whenever more than one person signs a consumer credit contract, each signer must receive a notice explaining the obligations imposed by the contract as well as a copy of all documents affecting the obligations to be undertaken. If the signers are married to each other, however, no notice need be delivered.

(c) Section 202a.11(b)(1)(i) of Regulation B provides that if a State law "* * * requires or permits a practice or act prohibited by the Act or (Regulation B)," it is preempted. In order to determine whether favoring unmarried applicants over married applicants when delivering notices is a practice intended to be prohibited by the ECOA, the scope and purpose of the Act must be identifed.

(d) The Act forbids discrimination in the granting of credit on several bases, but marital status is the only prohibited basis relevant to this discussion. The purpose of the Act as stated in section 502 is:

> * * * to require that financial institutions and other firms engaged in the extension of credit make that credit equally available to all creditworthy customers without regard to * * * marital status.

(e) Although the State law in question clearly discriminates on the basis of marital status by requiring protections for unmarried co-signers not required for married ones, the Board has determined that the discrimination is not the type prohbited by the Act because the State law does not inhibit the equal availability of credit to all creditworthy customers. The Board believes that a law requiring the delivery of a notice affects neither the availability of credit nor the creditworthiness of the applicant to the extent that would render it inconsistent with the Act and Regulation B, unless:

(1) The notice conveys information that is inconsistent with the intent of the Act or Regulation B; or

(2) The State law prohibits delivery of a notice required by the Act or Regulation B.

(f) Accordingly, the Board has determined that sections 1799.90–1799.96 of the California Civil Code requiring notifications for co-signers are not inconsistent with Regulation B. Creditors will not violate the Equal Credit Opportunity Act or Regulation B by complying with this State law.

[42 FR 22861, May 5, 1977. Redesignated at 50 FR 48026, Nov. 20, 1985]

§ 202a.1102 California law requiring Spanish translation of credit documents is not inconsistent with Equal Credit Opportunity Act.

(a) California Civil Code section 1632 generally requires that any person who negotiates primarily in the Spanish language orally or in writing in the course of entering into certain transactions, including some consumer credit contracts, must display a Spanish-language notice advising customers that they may request an unexecuted Spanish-language contract or agreement. Section 1799.91 requires that where the notice to cosigners, discussed above, is required, a Spanish translation of the notice must also be provided.

(b) The Board has been asked to determine whether the State law, by requiring creditors to give preferential treatment to Spanish-speaking credit applicants, requires discrimination against other credit applicants on the basis of their national origin, and, therefore is preempted by § 202a.11(b)(1)(i) of Regulation B.

(c) The judgment must be made whether a translation requirement benefitting only one national group frustrates the intent of the Federal Act and regulation; that is, whether affording special protection to one group adversely affects the creditworthiness of other groups or makes credit less available to them. The Board has determined that in the case of sections 1632 and 1799.91 of the California Civil Code, it does not.

(d) The right to obtain a translation of documents relating to a consumer credit transaction does not affect an applicant's credit worthiness nor does it make credit more readily available. It aids consumers in understanding the obligation they are about to incur. The Federal Equal Credit Opportunity Act requires that creditors apply their standards of creditworthiness uniformly without regard to national origin. A State requirement that contract terms be made more easily understandable for one group is therefore not inconsistent with the Act and Regulation B. Creditors may comply with the notification and translation requirements imposed by sections 1632 and 1799.91 of the California Civil Code without violating Regulation B.

(e) This interpretation should not be construed to condone a refusal to negotiate with certain groups or the discouraging of their applications because they are afforded special protection by State law. Such a practice may violate the Act and regulation.

[42 FR 22861, May 5, 1977. Redesignated at 50 FR 48026, Nov. 20, 1985]

§ 202a.1103 State laws setting different age of majority for married and unmarried persons not inconsistent with Equal Credit Opportunity Act.

(a) The Board has been asked whether State laws that set a different age of majority for married and unmarried persons are inconsistent with the Equal Credit Opportunity Act and are therefore preempted. These laws, combined with other State laws making contracts unenforceable against persons who have not reached the age of majority, result in different treatment of persons who are the same age, depending upon their marital status. Specifically, the Board has been asked to determine whether Nebraska Rev. Stat. 38 section 101 and Alabama Code 34 sections 76 and 76(1), which establish a younger age of majority for married persons than for unmarried persons, are inconsistent with the Equal Credit Opportunity Act. For the reasons set forth below, the Board has determined that these statutes are not inconsistent with the ECOA.

(b) The Equal Credit Opportunity Act prohibits discrimination in the granting of credit on several bases, including age and marital status, and authorizes the Board to determine whether any State laws are inconsistent with this mandate. The Board believes that the ECOA was not intended to preempt laws that provide rights and remedies in the event of default. Section 701(a)(1) of the Act prohibits discrimination on the basis of age, but specifically allows creditors to consider whether an applicant is old enough to execute an enforceable contract. In other words, a creditor may decline a credit application from a minor because, in the event of default, State contract law does not privide a means to enforce the contract. In addition, section 701(b)(1) allows creditors to ask marital status in order to ascertain "* * * the creditor's rights and remedies applicable to the particular extension of credit * * *."

(c) Accordingly, Regulation B, which in general prohibits the consideration of age or marital status, permits creditors to determine whether the applicant's age[1] or marital status[2] will affect the enforceability of the contract. Credit, therefore, may be denied if the creditor reasonably believes that, because of the age or marital status of the applicant, the credit contract would be unenforceable.

(d) Based upon this analysis, the Board has determined that Nebraska Rev. Stat. 38 section 101 and Alabama Code 34 sections 76 and 76(1) are not inconsistent with the Equal Credit Opportunity Act and Regulation B. Creditors may, therefore, consider the effect of these laws without violating the Equal Credit Opportunity Act of Regulation B.

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[1] Section 202a.6(b)(2)(i): * * * a creditor shall not take into account an applicant's age (*Provided*, The applicant has the capacity to enter into a binding contract) * * *.

[2] Section 202a.6(b)(1), footnote 8: This provision does not prevent a creditor from considering the marital status of an applicant * * * for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit * * *.

[42 FR 36810, July 18, 1977; 42 FR 39368, Aug. 4, 1977. Redesignated at 50 FR 48026, Nov. 20, 1985]

§ 202a.1104 State laws prohibiting marital status inquiries generally are not inconsistent with Equal Credit Opportunity Act.

The Board has been asked to determine whether a New Jersey statute that prohibits marital status inquiries in connection with a credit application is inconsistent with the Equal Credit Opportunity Act (15 U.S.C. 1691 through 1691(f)), as implemented by Regulation B (12 CFR Part 202a), and therefore preempted. The issue is whether an absolute ban on marital status inquiries is inconsistent with that portion of § 202a.5(d)(1) of Regulation B that permits marital status inquiries.

The New Jersey statute* generally bars marital status inquiries in connection with all credit applications. On the other hand, § 202a.5(d)(1) of Regulation B provides that a creditor may request an applicant's marital status when the applicant applies for credit with another person or relies on another person's income or assets or when the applicant seeks credit secured by collateral. For the reasons set forth below, the Board has determined that the New Jersey statute is not inconsistent with the ECOA.

A preemption determination requires a two-step analysis. First, the Board must determine whether the State law is inconsistent and, second, whether the State law is more protective of an applicant. If the Board determines that a State law is not inconsistent, however, then consideration of the "more protective" issue is not required.

In resolving the inconsistency issue, the first and key question is whether the New Jersey statute requires or permits a practice prohibited by the ECOA. If it does, then clearly it is inconsistent. But it does not. Indeed, the New Jersey statute does just the opposite; it prohibits a practice permitted by the ECOA.

Regulation B permits a creditor to ask about an applicant's marital status when the applicant applies for other than individual, unsecured credit. This regulatory provision implements a statutory determination that a marital status inquiry made for the purpose of ascertaining a creditor's rights and remedies does not represent marital status discrimination under the ECOA. Furthermore, the Act and regulation permit creditors to consider State property laws affecting creditworthiness even if those laws make distinctions based upon marital status.

The New Jersey statute under review clearly prevents a creditor from taking advantage of the ECOA and Regulation B provisions noted in the preceding paragraph. In that sense, it might be considered "inconsistent" with Federal law. The purpose of the provisions in the ECOA and Regulation B that permit marital status inquiries in certain circumstances, however, is to accommodate State laws that may affect creditworthiness. Thus, in this case, if the New Jersey statute banning marital status inquiries precludes consideration of factors under other New Jersey laws that affect creditworthiness, the inconsistency, in the Board's opinion, is between the differing New Jersey laws, not between State and Federal law.

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*New Jersey Stat. Annot. 10:15–12(i)(2) provides (emphasis added):

It shall be * * * an unlawful discrimination:

i. For any person, bank, banking organization, mortgage company, insurance company or other financial institution, lender or credit institution to whom application is made for any loan or extension of credit including but not limited to an application for financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any real property or part or portion thereof or any agent or employee thereof:

* * * * *

(2) *to use any form of application* for such loan, extension of credit or financial assistance *or to make any record or inquiry* in connection with applications for any such loan, extension of credit or financial assistance *which expresses,* directly or indirectly, *any limitation, specification or discrimination as to* race, creed, color, national origin, ancestry, *marital status,* sex or nationality or any intent to make any such limitation, specification or discrimination; *unless otherwise required by law or regulation to retain or use such information.*

The New Jersey legislature obviously has made a policy judgment that collection of information regarding an applicant's marital status for the purpose of determining a creditor's rights and remedies is not necessary. The ECOA leaves that judgment to state law. Therefore, the appropriateness of the New Jersey legislature's decision is not an issue in this matter. Since a New Jersey creditor can comply with the New Jersey statute without violating the ECOA, the Board believes that the laws are not inconsistent on the basic point of marital status discrimination.

Two remaining questions relevant to deciding whether the New Jersey statute is inconsistent are:

(1) Does the State law prevent a creditor from seeking information required for monitoring purposes under § 202a.13 of Regulation B or under substitute monitoring programs imposed by the other Federal enforcement agencies listed in section 704 of the ECOA?

(2) Does the State law prevent a creditor from making inquiries concerning information required for the establishment of special purpose credit programs under § 202a.8 of Regulation B?

The answer to these two questions also is that it does not. The Board interprets the language in the last sentence of the New Jersey statute—"unless otherwise required by law or regulation to retain or use such information"—to provide specifically for compliance with these provisions of Regulation B.

Based on this analysis, the Board has determined that the New Jersey statute, along with other substantially similar State laws prohibiting marital status inquiries in connection with a credit application, are not inconsistent with the ECOA and Regulation B and therefore are not preempted if those laws permit marital status inquiries in accordance with §§ 202a.8 and 202a.13 of Regulation B.

[44 FR 57070, Oct. 4, 1979. Redesignated at 50 FR 48026, Nov. 20, 1985]

EDITORIAL NOTE: Section 202a.1104 was suspended until further notice by a document published at 45 FR 3567, Jan. 18, 1980.

APPENDIX—OFFICIAL STAFF INTERPRETATIONS

[EC-0003]

MARCH 3, 1977.

In your letter of February 1, 1977, you requested an official staff interpretation regarding the effect of §§ 202a.7(b) (designation of name) and 202a.10 (furnishing of credit information) of revised Regulation B on your client's recordkeeping and billing procedures. Specifically, you asked whether these sections prohibit your client from following procedures described below when administering accounts on which a spouse is a user or contractually liable:

(1) Maintain all such accounts in the name of only one obligor;

(2) Address all statements and other account holder correspondence in the name of one obligor; and

(3) Emboss the name of one obligor on the credit card(s) issued pursuant to the account.

You further indicated that, notwithstanding these procedures, your client has devised a method of reporting credit information that meets the requirements of § 202a.10. You suggested that one means of accomplishing this is to gain access to accounts by use of an account number, rather than the name of an account holder. The following is an official staff interpretation of Regulation B, issued in accordance with § 202a.1(d) of the regulation.

Section 202a.7(b) requires creditors to allow applicants to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname. This provision was intended to correct the practice of requiring married women to use their husbands' names and to enable married women to establish credit histories in their own names. The section does not require creditors to allow the opening or maintenance of an account in two such names. Creditors may require joint account holders to choose one name in which the account will be maintained and billed and may require joint account holders to choose one name for use on a credit card, provided that the determination as to which name will be used is not made on a prohibited basis; for example, married applicants must be free to choose the name of either the husband or wife for use in billing statements.

As you know, § 202a.10 requires the reporting of accounts on which a spouse will be a user or contractually liable in the name of each spouse. No particular type of designation or indexing is required by the regulation. A creditor must have the capability to identify accounts on which a spouse is a user or contractually liable and to report information as required by § 202a.10. Any system of designation or indexing that facilitates compliance with this section is permissible. Section 202a.10 does not require the maintenance or billing of accounts or the issuance of credit cards in more than one name. Neither does the regulation require the creation of separate files in the name of each participant on a joint account.

We hope this response has been helpful. If we may be of further assistance, please do not hesitate to contact us.

Sincerely,

JANET HART,
Director.

[42 FR 15891, Mar. 24, 1977. Redesignated at 50 FR 48026, Nov. 20, 1985]

[EC-0004]

We understand that most state loan laws provide for graduated steps which impose limitations on interest charges. The rate of interest falls as the amount lent increases. Most loan laws also impose ceilings on the amount which may be lent. You have asked our staff to advise you concerning the effect of the Equal Credit Opportunity ACT (ECOA) and Regulation B upon state law provisions designed to prevent evasion of the graduated rate ceiling and the ceiling on the amount which can be lent. The following is an official staff interpretation of Regulation B issued pursuant to § 202a.1(d) of the regulation.

In formulating a response to your questions, we have classified the laws into three categories:

Class I. State laws which prohibit a creditor from making two separate extensions of credit to a husband and wife with the result that higher interest rates may be obtained than would otherwise be permitted under State law (New York, for example).[1]

Class II. State laws which forbid two extensions of credit when the second is made for the purpose of obtaining higher interest rates. Class II laws are to be distinguished from Class I laws in that the purpose of the second extension of credit in Class I states is irrelevant; the second extension must not result in higher interest rates. It is permissible to make the second extension of credit in Class II states providing it is made to accommodate the debtor's voluntary request and not for the purpose of obtaining higher interest rates, even though higher rates may result (Wisconsin, for example).[2]

Class III. State laws which have a flat prohibition against any person or husband and wife having more than one loan from a creditor (Illinois, for example).[3]

* * * * *

Under these laws, a person may have a joint account with a spouse or other person or a separate account, but not both unless (pursuant to State law) the second extension of credit is made at a lower interest rate. In these states, when an extension of credit is made to a spouse or any other

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[1] *New York Small Loan Act, Sec. 352.* "* * * No licensee shall permit any loan to be split up or divided. No licensee shall induce or permit any person, nor any husband and wife jointly or severally, to become obligated, directly or contingently, or both, under more than one contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by this section."

[2] *Wisconsin Discount Loan Law, Sec. 138.09(j).* "No licensee may divide any loan or otherwise encourage any person or any husband and wife to become obligated to the licensee directly, under more than one contract of loan at the same time for the purpose of obtaining a higher rate of finance charge than would otherwise be permitted by this section."

[3] Illinois Consumer Finance Act, *Sec. 13(d).* "No licensee may encourage, compel, or permit any borrower or borrowers to split up or divide any loan or loans. No licensee may encourage, compel or permit any person, nor any husband and wife, jointly or severally to become obligated, directly or contingently, or both, under more than one contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by this section * * * Rule 22(c). "No licensee shall have outstanding at the same time more than one loan transacted according to this Act to any one obligor. A man and wife living together shall be considered as one borrower." Illinois Consumer Installment Loan Act, section 16a. "Double Indebtedness Restriction—A licensee shall not permit an obligor to be indebted for a loan transacted pursuant to this Act when such obligor is simultaneously indebted to such licensee or an affiliate (including a corporation owned or managed by the licensee) or agent of such licensee for a loan made pursuant to the "Consumer Finance Act." Rule 22(d). "No licensee shall have outstanding at the same time more than one loan transacted according to this Act to any one obligor. A man and wife living together shall be considered as one borrower."

In staff's opinion, the following represents the correct application of Regulation B to the State laws classified above:

Class I. Regulation B will preempt laws in this class to the extent that they prohibit each spouse from obtaining credit separately. Two separate extensions of credit (one to a husband and one to a wife) are not to be combined to determine individual loan ceilings or finance charges.

Class II States in this classification will relatively unaffected by ECOA. Two separate extensions of credit (one to a husband and one to a wife) are not to be combined to determine individual loan ceilings or finance charges. Joint and separate loan extensions made to one debtor must be combined to determine loan ceilings but not finance charges. State law does not require creditors to offer lower interest rates which result from a second extension of credit. They forbid a second extension of credit made for the purpose of obtaining higher rates. There would be no reason to combine joint and separate loans to determine the appropriate finance charges.

Class III. In a state such as Illinois, no person (including husband or wife) may have a joint and separate loan from the same creditor. A husband and wife may each have separate loans because of ECOA preemption of state laws to the contrary. The existence of the type of laws in this classification eliminates the necessity of deciding whether joint and separate loans must be combined to determine finance charges or loan ceilings since this is only done when a creditor may extend joint and separate loans to the same person.

* * * * *

To illustrate these three classifications, assume the following facts:

A and B are married; the applicable loan ceiling is $300; a finance charge of 30% per annum may be imposed upon the unpaid balance of any loan up to $100, and 24% per annum on the remaining balance to $300.

After each example the following questions will be answered:

(a) Can the loan(s) be obtained?

(b) What is the dollar limit on the separate loans?

(c) What rate may be charged?

Class I: (1) A and B have no obligations. A wishes to borrow $100. B wishes to borrow $100.

(a) Each may get a loan.

(b) Each may borrow up to $300.

(c) Each may be charged 30%.

(2) A and B have a joint $100 obligation. A wants to borrow $100. B wants to borrow $100.

(a) Each may get a loan.

(b) Each may borrow up to $200, separately.

(c) Each may be charged only 24% on the additional $100.

Class II: (1) A and B have no obligations. A wishes to borrow $100. B wishes to borrow $100.

(a) Each may get a loan.

(b) Each may borrow up to $300.

(c) Each may be charged 30%.

(2) A and B have a $100 joint obligation. A wants to borrow $200. B wants to borrow $200.

(a) Each may get a loan (providing the purpose of the second loan is not to obtain higher interest rates).

(b) Each may borrow up to $200 separately.

(c) Each may be charged 30% on the first $100 and 24% on the additional $100.

Class III: (1) A and B have no obligations. A wants to borrow $100. B wants to borrow $100.

(a) Each may get a loan.

(b) Each may borrow up to $300.

(c) Each may be charged 30 percent.

(2) A and B have a $100 joint obligation. A wants to borrow $100. B wants to borrow $100.

(a) Neither may obtain an additional, separate extension of credit until the joint obligation is satisfied.

(b) Not applicable.

(c) Not applicable.

If we may be of further assistance, please do not hesitate to contact this office.

Sincerely,

JANET HART,
Director.

[42 FR 15892, Mar. 24, 1977. Redesignated at 50 FR 48026, Nov. 20, 1985]

[EC-0005]

Section 202a.13—Mortgage lender should request data if applicant seeks both temporary financing to construct dwelling and permanent financing, but not if application is limited to construction financing; where separate form is used, lender should include questions about marital status and age.

This is in response to your February 17 letter regarding § 202a.13 of Regulation B. I

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person when this person already has a joint obligation outstanding with the creditor, joint and separate accounts of the applicant must be combined to determine the permissible finance charges and applicable loan ceilings (see § 202a.8(b) of Regulation B; § 202a.11(c) of the amended regulation). Staff feels that there is no affirmative requirement that a creditor make a second loan in these states, providing second loans are not denied on any basis prohibited by ECOA.

apologize for the delay in answering. In accordance with your request, this is an official staff interpretation of the regulation, issued pursuant to § 202a.1(d).

Your first question is whether a mortgage lender must request the information required by § 202a.13 for monitoring purposes in connection with consumer credit applications relating to the construction of the residential real property as well as in connection with applications relating to the purchase of such property. You point out that § 202a.13(a) uses only the word "purchase," while the model residential real estate mortgage loan application in Appendix B uses the phrase "purchase or construction."

In the opinion of the Board's staff, a creditor need not collect information pursuant to § 202a.13 when an applicant applies for consumer credit relating solely to the temporary financing of the construction of a residential dwelling. If, however, a consumer credit applicant applies for both a temporary loan to finance the construction of a residential dwelling and a permanent mortgage loan to take effect when the construction is successfully completed, then the lender has received an application covered by § 202a.13 and must comply with the requirements of that section.

In any event, if a mortgage lender uses an application form that contains a monitoring information section pursuant to § 202a.13 and an applicant inadvertently supplies the information in a situation not covered by § 202a.13, the creditor nevertheless may act on and retain the application without violating Regulation B. The creditor would be protected by § 202a.12(a)(3) since the information would not have been obtained in response to a specific request of the creditor.

Your second question is whether a creditor should include questions about marital status and age on a separate form that is used, pursuant to § 202a.13(b), for the purpose of collecting monitoring information. You note that the section of the model mortgage loan application relating to monitoring does not include questions about marital status or age; those questions appear on the front of the model form. You indicate, however, that you think that any creditor using a separate form should include questions on that form concerning an applicant's age and marital status.

If a transaction is subject to § 202a.13, a creditor must request information about an applicant's age and marital status either on an application form or on a separate monitoring form. If the information is requested on an application form for appropriate consideration under § 202a.6, then the creditor need not request the information again for monitoring purposes and need not inform the applicant under § 202a.13(c) that age and marital status information is being voluntarily requested for government monitoring purposes. If, however, age and marital status information is not sought for credit-related purposes on an application form, then the creditor must ask for that information either in a monitoring section on the application or on a separate monitoring form; and the creditor must provide the disclosures required by § 202a.13(c).

I trust that this official staff interpretation answers your questions. If we can be of further assistance, please let us know.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

[42 FR 21605, Apr. 28, 1977. Redesignated at 50 FR 48026, Nov. 20, 1985]

[EC-0006]

Section 202a.2(p)—System for evaluating creditworthiness may include both credit scoring and non-scoring components, provided each component complies with limitations imposed by regulation. Aspects of transaction need not be scored.

Thank you for your letter of March 14, 1977 pertaining to § 202a.2(p) of Regulation B. You describe a situation in which a creditor requires that an applicant receive a passing score in a credit scoring system and then, in addition, pass certain judgmental tests in order to receive credit. You inquire whether a credit scoring system which considers the applicant's age may be used in conjunction with other judgmental tests when analyzing an applicant's creditworthiness.

Section 202a.2(p)(1) of Regulation B provides that an empirically derived credit system is a credit scoring system which evaluates creditworthiness primarily by scoring the attributes of the applicant. Other aspects of the transaction may, but need not, also be scored. The scoring portion of the demonstrably and statistically sound, empirically derived credit system may be combined with additional information about the applicant which is pertinent to creditworthiness.

Section 202a.2(p), therefore, contemplates that a demonstrably and statistically sound, empirically derived credit system is composed of a scoring component and that it may also have a non-scoring component. The scoring component of the system is required to pass certain statistical standards, which are prescribed in detail in § 202a.2(p)(2) of Regulation B. If it passes those tests, then age may be used in the scoring system. If age is used as an attribute which is scored, elderly applicants may not receive a negative factor or value for their age.

The non-scoring component is optional. If the system does have a non-scoring component, that component must comply with the requirements imposed upon judgmental systems of evaluating applicants. In particular, the non-scoring component of the demonstrably and statistically sound, empirically derived credit system may not consider the applicant's age directly. The non-scoring component may consider "pertinent elements of creditworthiness" which may incidentally be correlated with or dependent upon age.

The non-scoring component of a demonstrably and statistically sound, empirically derived credit system may consist of one or more additional credit analysis factors. As we understand it, these factors might include obtaining a credit report, undertaking a cash flow analysis consideration of events such as bankruptcy which occur too infrequently for development as a scored attribute but which are highly pertinent to creditworthiness, appraisal of collateral, and exercise of discretion by a credit officer. The components may interact in any way that the creditor finds useful in evaluating creditworthiness, so long as the scoring component conforms to the requirements of § 202a.2(p)(2) and the non-scoring component conforms to the rules for judgmental systems.

The entire system including the scoring and non-scoring components is, of course, subject to the general rule of § 202a.4, prohibiting discrimination, and to the full impact of the effects test.

We hope that the foregoing responds fully to your inquiry. This is an official staff interpretation of Regulation B.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

[42 FR 21605, Apr. 28, 1977. Redesignated at 50 FR 48026, Nov. 20, 1985]

[EC-0008]

Section 202a.2(c)—Card issuer's refusal or failure to honor or authorize use of card, when use would not exceed credit limit, is not "adverse action." As to open end accounts, "adverse action" can occur at initial refusal to grant an account, on termination or unfavorable change of terms, or on refusal to increase credit limit when account holder has followed creditor's established procedures for requesting increase.

This is in response to your February 23 letter regarding the definition of adverse action under § 202a.2(c) of Regulation B. In accordance with your request, this is an official staff interpretation of Regulation B, issued pursuant to § 202a.1(d).

Your letter raises a basic issue: is a credit card issuer's refusal or failure to honor or authorize the use of a card adverse action when its use would not exceed a previously established dollar credit limit on an account? In your opinion, such a refusal or failure is not adverse action, and, therefore, the notices required by § 202a.9 need not be sent.

You explain that issuers often establish limits on the number of transactions exceeding a specified dollar amount that can occur within a certain time period. When a person attempts to use the card and the transaction would exceed that limit, the issuer will refuse to authorize the transaction unless it can verify that the transaction involves an authorized card holder and is otherwise legitimate. This is done to protect both the account holder and the issuer from losses arising from the fraudulent use of a credit card.

Although the refusal or failure to honor a card can arise in a variety of circumstances, the staff believes that all such situations can be treated similarly for the purpose of analyzing whether adverse action has been taken under the terms of the Equal Credit Opportunity Act (ECOA) and Regulation B.

Section 202a.2(f) of Regulation B excludes from the definition of application "the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit." This exclusion is derived by implication from the statutory definition of applicant in section 702(b), which provides, in part, that an applicant is a person who "applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit." Thus, the use of a credit card account to obtain cash, goods, or services, where the amount of the charge does not exceed any previously established dollar limit on the account, is not an application for credit under Regulation B.

Since the use of an account where the amount to be charged does not exceed an overall dollar limit is not a credit application, a refusal or failure to honor or authorize the use of the account is not adverse action under § 202a.2(c)(1) (i) and (iii), both of which relate to applications. Nor is such a refusal or failure adverse action under § 202a.2(c)(1)(ii) if the account, although temporarily unusable, remains in existence, subject to its original terms.

The FEDERAL REGISTER explanatory material relating to § 202a.2(c) of revised Regulation B (42 FR 1242) includes the statement: "However, a point of sale refusal of credit is adverse action if the refusal occurs for a reason other than exceeding the pre-established credit limit." The analysis presented in this letter supersedes the FEDERAL REGISTER statement.

Turning to a different situation, the attempted use of an existing account to obtain cash, goods, or services in an amount exceeding a previously established credit limit may be a credit application. A refusal to extend the credit requested in that situation is nonetheless not adverse action because it is excluded from the definition of adverse action in § 202a.2(c)(2)(iii), which is derived directly from section 701(d)(6) of the ECOA.

To summarize the matter from a different perspective, there are only three instances in which adverse action may be taken regarding an open end credit account. First, a creditor may decline initially to offer such an account on terms acceptable to an applicant § 202a.2(c)(1)(i). Second, a creditor may terminate or adversely change the terms of an existing account without affecting a substantial portion or classification of accounts, without the consent of the account holder, and not in connection with current inactivity, default, or delinquency relating to the account (§ 202a.2(c) (1)(ii), (2)(i), and (2)(ii)).

Finally, a creditor may refuse to increase any credit limit on the account when the account holder has applied for an increase in accordance with procedures established by the creditor (§ 202a.2(c)(1)(iii)). In those three situations, a creditor would have taken adverse action. Ordinarily, however, adverse action does not occur in connection with the use of an existing open end account.

I trust that these comments answer your questions. Please let us know if we can be of further assistance.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

[42 FR 21605, Apr. 28, 1977. Redesignated at 50 FR 48026, Nov. 20, 1985]

[EC-0009]

Section 202a.3(e)—Relation between business credit exemptions provided by § 202a.3(e) and requirements under §§ 202a.9 and 202a.12.

Section 202a.9—Relation between business credit exemptions provided by § 202a.3(e) and requirements under §§ 202a.9 and 202a.12.

Section 202a.12—Relation between business credit exemptions provided by § 202a.3(e) and requirements under §§ 202a.9 and 202a.12.

NOVEMBER, 2, 1977.

In your letter of September 14, 1977, you requested an official Board or staff interpretation regarding the treatment of business credit in Regulation B, Equal Credit Opportunity. The following is an official staff interpretation.

Section 202a.3 affords specialized treatment to business credit. In particular, § 202a.3(e) exempts business credit transactions from § 202a.9, notifications, unless an applicant requests the reasons for adverse action. You ask for clarification of the relationship between §§ 202a.3 and 202a.9.

A creditor is required by § 202a.3(e)(2) to notify an applicant that adverse action has been taken within a reasonable time of such action. This notification may be written or oral. The applicant then has 30 days to make a request in writing for the reasons for the adverse action. You ask what must be done when the applicant makes such a request.

When such a request is received, the creditor has 30 days to give the applicant a written statement of the specific reasons for the action and the Equal Credit Opportunity Act notice. The sample forms set forth in § 202a.9(b)(2) may be used or may be adapted for business credit purposes. That portion of the sample statement required by the Fair Credit Reporting Act and related to disclosure of the source of outside information is, of course, inapplicable to business credit. In addition, a business creditor may rely on the special rules provided by § 202a.9 with regard to multiple applicants, multiple creditors, other information, oral notifications, withdrawn applications, inadvertent errors, and method of delivering the notification.

You also request clarification of the relation between §§ 202a.3 and 202a.12(b), concerning record retention. If, within 90 days after adverse action was taken, an applicant makes a written request that the records relating to the application be retained, a creditor must retain records as required by § 202a.12(b).

If we may be of further assistance, please do not hesitate to contact this office.

Very truly yours,

NATHANIEL E. BUTLER,
Associate Director.

[42 FR 62903, Dec. 14, 1977. Redesignated at 50 FR 48026, Nov. 20, 1985]

[EC-0010]

MARCH 16, 1978

On April 13, 1977, the staff issued an official interpretation, subsequently designated EC-0007, in response to your letter of February 8, 1977. As you know, the Board was asked by the Federal Trade Commission and the Department of Justice to rescind that interpretation. In September 1977, the Board considered the matter and affirmed the staff's position.

New requests for rescission have been filed by the FTC, Justice, and consumer representatives. Upon consideration of those requests, the staff is rescinding EC-0007 and is issuing this revised interpretation (designated EC-0010) in its place. This revised interpretation does not change the substance of our earlier letter to you but is intended to emphasize certain aspects of the staff interpretation.

Your letter of February 8, 1977 was written on behalf of a seller of religious books and was based on the following facts. Your client operates primarily through home solicitation sales and permits customers to purchase the merchandise under an open end credit arrangement. The sales agent orally requests and records information about the customer (such as age, address, employer, bank account, and credit references) on an applicant information form printed on the reverse of the credit agreement that is signed by the customer. The sales agent also inquires about an applicant's religious affiliation and records this information in a box labeled "Church (group)" located on the first line of the applicant information form.

You stated in your letter that, given the nature of your client's business, information about a customer's religion is essential to selling the books in an effective, non-offensive way. You expressed concern, however, that asking for information about religious affiliation, even for non-credit purposes, might violate § 202a.5(d)(5) of Regulation B. That section specifies in relevant part that a creditor shall not request the "religion * * * of an applicant or any other person in connection with a credit transaction."

The staff's opinion is that your client may inquire about a customer's religion in connection with the marketing of its books, since that characteristic is specifically and directly related to your client's product. We remind your client, however, that:

(1) This exception is available to your client only with regard to a customer's religion; it does not extend to information about other characteristics that Regulation B bars a creditor from soliciting.

(2) Although the information is available to your client under this limited marketing exception, information about a client's religious affiliation may not be considered by your client in making any credit decision.

(3) The record retention provisions of Regulation B provide that your client is required to retain a copy of any credit application form for a period of 25 months. Under the facts you describe, the customer's religious affiliation form itself and, thus, will be available for review by the Federal Trade Commission, the federal enforcement agency that has jurisdiction over your client, should the occasion arise.

(4) If the information concerning an applicant's religion is solicited on a document other than the applicant form, that document will be deemed to be part of the credit applicant subject to the retention requirements of § 202a.12(b).

The staff emphasizes that this interpretation sanctions the soliciting of information about religious affiliation only for marketing purposes. The interpretation in no way alters the prohibition against considering this type of information in an evaluation of creditworthiness. Moreover, the risk remains of your client's having to demonstrate that it does not discriminate against applicants on the basis of religion, even though it possesses such information. Whether to accept that risk is, of course, a decision that your client must make.

This is an official staff interpretation of Regulation B, issued pursuant to § 202a.1(d) and limited in its application to the facts discussed in this letter.

Sincerely.

NATHANIEL E. BUTLER,
Associate Director.

[43 FR 11967, Mar. 23, 1978. Redesignated at 50 FR 48026, Nov. 20, 1985]

[EC-0011]

Section 202a.1(a), Act section 502, Regulation B does not apply to lending operations conducted outside U.S., where lender is incorporated outside U.S. and applicants reside abroad.

JUNE 22, 1978.

This is in response to your letter dated . . ., in which you present a question concerning the extraterritorial applicability of Regulation B and the Equal Credit Opportunity Act.

Your question is based on the following facts. A number of persons whom you represent intend to organize a corporation for the purpose of making loans to entrepreneurs in less developed countries. In particular, evangelical Christian entrepreneurs are expected to receive such loans, because the organizers of the corporation believe that Christians, due to their minority status in many less developed countries, are presently subject to credit discrimination. The corporation will be incorporated in a foreign jurisdiction, and all of its lending activities will be carried on outside the United States. Some of the corporation's organizers, directors, and shareholders will be U.S. citizens and residents. Loans will be made both to non-U.S. citizens and to U.S. citizens residing abroad. You ask whether the Act and Regulation B would apply to these lending activities.

Regulation B does not contain a statement of its territorial scope. The same is true of the Act itself. Thus, it is necessary to consider the general principles relating to the extraterritorial effect of U.S. laws, as well as the purposes of the Act.

In general, the courts have held that Federal statutes do not apply beyond the boundaries of the United States, subject, however, to a number of exceptions. One such exception is that U.S. laws may apply to acts that take place on foreign soil but that have effects within the United States. Under this principle, for example, the antitrust laws are held to apply to agreements made outside the United States but having domestic effects. In the case you describe, however, the lending operations in question would appear to have little, if any, effect within the United States.

Another exception to the rule of territorial applicability is that a Federal statute may apply outside the United States if such was the legislative intent. The legislative history of the Act and the 1976 amendments thereto does not reveal any conclusive evidence that Congress intended the act to have extraterritorial application. In addition, section 502 of Pub. L. 93-495, the Act's declaration of purpose, indicates that Congress found that eliminating discrimination in credit would promote economic stabilization and competition among credit grantors. This suggests that the focus of the Act is on the domestic economy. As you point out, public information letter No. 654 concerning Regulation Z expresses similar reasoning with regard to the Truth in Lending Act. The staff believes that this reasoning is applicable to the Equal Credit Opportunity Act as well.

For the reasons set forth above, the staff is of the opinion that the Equal Credit Opportunity Act and Regulation B will not apply to the lending activities previously described. In the case you present, of course, the proposed credit transactions will have few contacts with the United States. If there were more contacts or the transactions affected the domestic economy, then the result might well be different. In addition, the Act and the regulation would apply to any credit transaction that is structured so as to take place abroad for the purpose of evading the requirements of the Act and the regulation.

In accordance with your request, this is an official staff interpretation of Regulation B issued pursuant to § 202a.1(d)(2). It will become effective 30 days after publication in the FEDERAL REGISTER unless a request for public comment, made in accordance with the Board's procedures, is received and granted. We will notify you if the effective date of the interpretation is suspended.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

[43 FR 30531, July 17, 1978. Redesignated at 50 FR 48026, Nov. 20, 1985]

[EC-0012]

Section 202a.5(e) FHLMC-FNMA residential mortgage loan application and supplemental forms as revised 8/78 comply with Regulation B.

AUGUST 29, 1978.

This responds to your inquiry as to whether the revised residential real estate mortgage loan application and supplemental forms prepared jointly by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association comply with the Equal Credit Opportunity Act (15 U.S.C. 1601 *et seq.*) and the Board's Regulation B (12 CFR Part 202a) implementing the Act.

The principal changes in the loan application and the only ones having any significance in relation to ECOA and Regulation B are the revision of the section formerly headed "Voluntary Information For Government Monitoring Purposes" and the creation of a monitoring inserts form. The language previously contained in the monitoring information section and the word "Voluntary" in the caption have been deleted because identical monitoring requirements no longer apply to all lenders doing business with FHLMC and FNMA. The Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board have adopted substitute monitoring programs that apply to the financial institutions that they regulate (43 FR 11563 (March 20, 1978) and 43 FR 22332 (May 25, 1978), respectively). The Comptroller also intends to adopt a substitute monitoring program for national banks. Furthermore, although State authorities and Federal agencies that do not have administrative enforcement authority under ECOA may not substitute different monitoring programs for those imposed pursuant to § 202a.13 of Regulation B, they may require supplementary monitoring procedures as permitted by § 202a.5(b)(2).

To accommodate these different monitoring programs, the revised FHLMC-FNMA application form instructs lenders to insert in the monitoring section or on an addendum the appropriate language for the monitoring program to which they are subject. FHLMC and FNMA have provided the appropriate language for existing ECOA monitoring programs in a supplemental form (FHLMC 65B/FNMA 1003B 8/78) that reprints the language previously contained in the monitoring information section and that in addition contains language approved by FDIC and FHLBB for compliance with their respective monitoring programs. If any other ECOA enforcement agency adopts different requirements, appropriate additional language will be added to the supplement. Lenders are reminded that they also are responsible for compliance with applicable State monitoring requirements.

Appendix B to Regulation B states that "[u]se of the FHLMC 65/FNMA 1003 (Rev. 3/77) form constitutes full compliance with subsections (c) and (d) of § 202a.5 of this part." In the staff's opinion, application form FHLMC 65/FNMA 1003 Rev. 8/78, the accompanying statement of assets and liabilities (FHLMC 65A/FNMA 1003A Rev. 8/

78), and the monitoring inserts (FHLMC 65B/FNMA 1003B 8/78), copies of which are attached, also comply fully with § 202a.5 of Regulation B. Furthermore, if a lender uses the forms as intended and properly solicits the appropriate monitoring information in accordance with form FHLMC 65B/FNMA 1003B 8/78 and the regulations of the Federal enforcement agency that supervises that lender, then the lender will have acted in compliance with §§ 202a.5 and 202a.13 of Regulation B.

In accordance with your request, this is an official staff interpretation of Regulation B issued pursuant to § 202a.1(d)(2). It will become effective 30 days after publication in the FEDERAL REGISTER unless a request for public comment, made in accordance with the Board's procedures, is received and granted. The staff will promptly notify you if the effective date of the interpretation is suspended because such a request has been received.

I trust that these official comments are responsive to your inquiry.

Sincerely,

JANET HART,
Director.

[43 FR 39341, Sept. 5, 1978. Redesignated at 50 FR 48026, Nov. 20, 1985]

[EC-0015]

Section 202a.5(e), FHLMC-FNMA home improvement and energy loan application complies with Regulation B.

FEBRUARY 27, 1980.

You ask in your . . . letter whether the Home Improvement and Energy Loan Application (FHLMC Form 703/FNMA Form 1012, 2/80) prepared jointly by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association complies with the Equal Credit Opportunity Act as implemented by Federal Reserve Regulation B.

We have examined the application; in our opinion, it fully complies with § 202a.5(c) and (d) of Regulation B. We therefore believe that a creditor that properly uses the application also would comply with those provisions of the regulation.

As you have requested, this is an official staff interpretation of Regulation B, issued pursuant to § 202a.1(d)(2)(i). It will become effective 30 days after publication in the FEDERAL REGISTER unless a request for public comment, made in accordance with the Board's procedures, is received and granted. We will notify you if the effective date of the interpretation is suspended.

Very truly yours,

Nathaniel E. Butler,
Associate Director.

[45 FR 16999, Mar. 17, 1980. Redesignated at 50 FR 48026, Nov. 20, 1985]

APPENDIX A—FEDERAL ENFORCEMENT AGENCIES

The following list indicates which Federal agency enforces Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency.

National Banks: Comptroller of the Currency, Consumer Affairs Division, Washington, DC 20219.

State Member Banks: Federal Reserve Bank serving the district in which the State member bank is located.

Nonmember Insured Banks: Federal Deposit Insurance Corporation Regional Director for the region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC): The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions: Regional office of the National Credit Union Administration serving the area in which the Federal credit union is located.

Air Carriers: Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590

Creditors Subject to Interstate Commerce Commission: Office of Proceedings, Interstate Commerce Commission, Washington, DC 20523.

Creditors Subject to Packers and Stockyards Act: Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies: U.S. Small Business Administration, 1441 L Street, N.W., Washington, DC 20416.

Brokers and Dealers: Securities and Exchange Commission, Washington, DC 20549.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations: Farm Credit Administration, 490 L'Enfant Plaza, SW, Washington, DC 20578.

Retail, Department Stores, Consumer Finance companies, All other Creditors, and All Nonbank Credit Card Issuers: (Lenders operating on as local or regional basis should use the address of the F.T.C. Regional Office in which they operate), Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

[42 FR 1242, Jan. 6, 1977, as amended at 50 FR 8707, Mar. 5, 1985. Redesignated at 50 FR 48026, Nov. 20, 1985]

APPENDIX B—MODEL APPLICATION FORMS

This Appendix contains five model credit application forms, each designed for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form (which should be removed prior to reproduction). The first sample form is intended for use in open end, unsecured transactions; the second for closed end, secured transactions; the third for closed end transactions, whether unsecured or secured; the fourth for use in transactions involving community property of occurring in community property States; and the fifth for use in secured residential real estate transactions. The real estate form should be used only when a lender's representative is available to assist an applicant in completing the form.

The forms contained in this Appendix are models; their use by creditors is optional. In all instances, the use or modicication of these forms is governed by § 202a.5(e) of this part and the directions contained in this appendix.

In addition to deleting any information request printed on the forms or rearranging their format, as specified in § 202a.5(e), a creditor is expressly permitted to modify any of the model forms contained in this Appendix by adding any of the following three items:

(1) An inquiry about the names in which an applicant has previously received credit as authorized in § 202a.5(c)(3);

(2) A request to designate a courtesy title as authorized in § 202a.5(d)(3); or

(3) An inquiry about an applicant's permanent residence and United States immigration status as authorized by § 202a.5(d)(5).

The fifth form contained in this Appendix, the model residential real estate mortgage loan application, was prepared in conjunction with the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. It is substantially identical to the joint FHLMC 65/FNMA 1003 (Rev. 3/77 form, except for type face and the inclusion of the FHLMC/FNMA form of certain items required by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. If a creditor wishes to participate in the secondary mortgage market involving the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or Government National Mortgage Association, it should either modify the model form as specified by the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association or use form FHLMC 65/FNMA 1003 (Rev. 3/77) with supporting schedule FHLMC 65A/FNMA 1003A. Use of the FHLMC 65/FNMA 1003 (Rev. 3/77) form constitutes full compliance with subsections (c) and (d) of § 202a.5 of this part.

[Open end, unsecured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.

☐ If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.

☐ If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ______________________ Birthdate: / /

Present Street Address: ______________________ Years there: ______

City: ____________ State: ________ Zip: ________ Telephone: ____________

Social Security No.: ______________ Driver's License No.: ______________

Previous Street Address: ______________________ Years there: ______

City: ____________ State: ________ Zip: ________

Present Employer: ______________ Years there: ________ Telephone: ____________

Position or title: ______________ Name of supervisor: ______________

Employer's Address: ______________________________

Previous Employer: ______________________ Years there: ______

Previous Employer's Address: ______________________________

Present net salary or commission: $________ per ________ No. Dependents: ________ Ages: ________

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $________ per ________ Source(s) of other income: ______________

____

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? ________ When? ________ Office: ______________

Checking Account No.: ______________ Institution and Branch: ______________

Savings Account No.: ______________ Institution and Branch: ______________

Name of nearest relative not living with you: ______________________ Telephone: ____________

Relationship: ____________ Address: ______________________

SECTION B—INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): ______________________ Birthdate: / /

Relationship to Applicant (if any): ______________________________

Present Street Address: ______________________ Years there: ______

City: ____________ State: ________ Zip: ________ Telephone: ____________

Social Security No.: ______________ Driver's License No.: ______________

Present Employer: ______________ Years there: ________ Telephone: ____________

Position or title: ______________ Name of supervisor: ______________

Employer's Address: ______________________________

Previous Employer: ______________________ Years there: ______

Previous Employer's Address: ______________________________

Present net salary or commission: $________ per ________ No. Dependents: ________ Ages: ________

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $________ per ________ Source(s) of other income: ______________

____

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No.: ______________ Institution and Branch: ______________

Savings Account No.: ______________ Institution and Branch: ______________

Name of nearest relative not living with Joint Applicant, User, or Other Party: ______________________ Telephone: ____________

Relationship: ____________ Address: ______________________

SECTION C—MARITAL STATUS

(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED **(Use separate sheet if necessary.)**

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS **(Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)**

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
4.						
5.						
6.						
Total Debts			$	$	$	
(Credit References)						Date Paid
1.			$			
2.						

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ **If "yes" for whom?** **To whom?**

Are there any unsatisfied judgments against you? Yes ☐ No ☐ **Amount $** **If "yes" to whom owed?**

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ **If "yes" where?** **Year**

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature **Date** **Other Signature (Where Applicable)** **Date**

[Closed end, secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.

☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

Amount Requested $.................... Payment Date Desired .... Proceeds of Credit To be Used For....................

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): .... Birthdate: / /

Present Street Address: .... Years there: ....

City: .... State: .... Zip: .... Telephone: ....

Social Security No.: .... Driver's License No.: ....

Previous Street Address: .... Years there: ....

City: .... State: .... Zip: ....

Present Employer .... Years there: .... Telephone: ....

Position or title: .... Name of supervisor: ....

Employer's Address: ....

Previous Employer: .... Years there: ....

Previous Employer's Address: ....

Present net salary or commission: $.......... per .... No. Dependents: .... Ages: ....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $.......... per .... Source(s) of other income: ....

....

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? .... When? .... Office: ....

Checking Account No. .... Institution and Branch: ....

Savings Account No. .... Institution and Branch: ....

Name of nearest relative not living with you: .... Telephone: ....

Relationship: .... Address: ....

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): .... Birthdate: / /

Relationship to Applicant (if any): ....

Present Street Address: .... Years there: ....

City: .... State: .... Zip .... Telephone: ....

Social Security No.: .... Driver's License No.: ....

Present Employer: .... Years there: .... Telephone: ....

Position or title: .... Name of supervisor: ....

Employer's Address: ....

Previous Employer: .... Years there: ....

Previous Employer's Address: ....

Present net salary or commission: $.......... per .... No. Dependents: .... Ages: ....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $.......... per .... Source(s) of other income: ....

....

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: .... Institution and Branch: ....

Savings Account No.: .... Institution and Branch: ....

Name of nearest relative not living with Joint Applicant or Other Party: ....

Relationship: .... Address: ....

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	
(Credit References)						Date Paid
1.			$			
2.						

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name	Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date

[Closed end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.

☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, then complete Section E.

Amount Requested **Payment Date Desired** **Proceeds of Credit**

$________ ________ **To be Used For** ________

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ________ **Birthdate:** / /

Present Street Address: ________ **Years there:** ________

City: ________ **State:** ________ **Zip:** ________ **Telephone:** ________

Social Security No.: ________ **Driver's License No.:** ________

Previous Street Address: ________ **Years there:** ________

City: ________ **State:** ________ **Zip:** ________

Present Employer: ________ **Years there:** ________ **Telephone:** ________

Position or title: ________ **Name of supervisor:** ________

Employer's Address: ________

Previous Employer: ________ **Years there:** ________

Previous Employer's Address: ________

Present net salary or commission: $________ **per** ________ **No. Dependents:** ________ **Ages:** ________

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $________ **per** ________ **Source(s) of other income:** ________

____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.) ☐ No

Have you ever received credit from us? ________ **When?** ________ **Office** ________

Checking Account No.: ________ **Institution and Branch:** ________

Savings Account No.: ________ **Institution and Branch:** ________

Name of nearest relative not living with you: ________ **Telephone:** ________

Relationship: ________ **Address:** ________

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): ________ **Birthdate:** / /

Relationship to Applicant (if any): ________

Present Street Address: ________ **Years there:** ________

City: ________ **State:** ________ **Zip:** ________ **Telephone:** ________

Social Security No.: ________ **Driver's License No.:** ________

Present Employer: ________ **Years there:** ________ **Telephone:** ________

Position or title: ________ **Name of supervisor:** ________

Employer's Address: ________

Previous Employer: ________ **Years there:** ________

Previous Employer's Address: ________

Present net salary or commission: $________ **per** ________ **No. Dependents:** ________ **Ages:** ________

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $________ **per** ________ **Source(s) of other income:** ________

____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.) ☐ No

Checking Account No.: ________ **Institution and Branch:** ________

Savings Account No.: ________ **Institution and Branch:** ________

Name of nearest relative not living with Joint Applicant or Other Party: ________ **Telephone:** ________

Relationship: ________ **Address:** ________

SECTION C—MARITAL STATUS
(Do not complete if this is an application for individual unsecured credit.)
Applicant: ☐ **Married** ☐ **Separated** ☐ **Unmarried (including single, divorced, and widowed)**
Other Party: ☐ **Married** ☐ **Separated** ☐ **Unmarried (including single, divorced, and widowed)**

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED **(Use separate sheet if necessary.)**

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS **(Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)**

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	
						Date Paid
(Credit References)						
1.			$			
2.						

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "Yes," for whom? ____ To whom? ____

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ ____ If "Yes," to whom owed? ____

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "Yes," where? ____ Year ____

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) **Briefly describe the property to be given as security:**

and list names and addresses of all co-owners of the property:

Name	Address

If the security is real estate, give the full name of your spouse (if any): ____

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.

☐ In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.

Amount Requested $ Payment Date Desired Proceeds of Credit To be Used For

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): Birthdate: / /
Present Street Address Years there:
City: State: Zip: Telephone:
Social Security No.: Driver's License No.:
Previous Street Address: Years there:
City: State: Zip:
Present Employer: Years there: Telephone:
Position or title: Name of supervisor:
Employer's Address:
Previous Employer: Years there:
Previous Employer's Address:
Present net salary or commission: $ per No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per Source(s) of other income:

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? When? Office:
Checking Account No.: Institution and Branch:
Savings Account No.: Institution and Branch:
Name of nearest relative not living with you Telephone:
Relationship: Address:

SECTION B—INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): Birthdate: / /
Relationship to Applicant (if any): Years there:
Present Street Address:
City: State: Zip: Telephone:
Social Security No.: Driver's License No.:
Present Employer: Years there: Telephone:
Position or title: Name of supervisor:
Employer's Address:
Previous Employer: Years there:
Previous Employer's Address:
Present net salary or commission: $ per No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per Source(s) of other income:

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No.: Institution and Branch:
Savings Account No.: Institution and Branch:
Name of nearest relative not living with Spouse, Joint Applicant, User, or other Party: Telephone:
Relationship: Address:

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Spouse, Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Name of Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	
(Credit References)						Date Paid
1.			$	☒	☒	
2.				☒	☒	

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes," for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes," to whom owed?

Have you been declared bankrupt in the last 14 years Yes ☐ No ☐ If "yes," where? Year

Other obligations—(E.g., Liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name Address

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Residential real estate mortgage loan]

RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR ☞	☐ Conventional ☐ FHA ☐ VA ☐ ______	Amount $ ______	Interest Rate ____%	No. of Months	Monthly Payment Principal & Interest $ ______	Escrow/Impounds (to be collected monthly) ☐ Taxes ☐ Hazard Ins. ☐ Mtg. Ins. ☐ ______

Prepayment Option

1. SUBJECT PROPERTY

Property Street Address	City	County	State	Zip	No. Units

Legal Description (Attach description if necessary.)	Year Built

Purpose of Loan: ☐ Purchase ☐ Construction-Permanent ☐ Construction ☐ Refinance ☐ Other (Explain)

Complete this line if Construction-Permanent or Construction Loan ☞	Lot Value Data Year Acquired ______	Original Cost $ ______	Present Value (a) $ ______	Cost of Improv. (b) $ ______	Total (a + b) $ ______	ENTER TOTAL AS PURCHASE PRICE IN DETAILS OF PURCHASE.

Complete this line if a Refinance Loan Purpose of Refinance Describe Improvements [ ] made [ ] to be made

Year Acquired	Original Cost $	Amt. Existing Liens $

Cost: $ ______

Title Will Be Held In What Name(s)	Manner In Which Title Will Be Held

Source of Down Payment and Settlement Charges

This application is designed to be completed by the borrower(s) with the lender's assistance. The Co-Borrower Section and all other Co-Borrower questions must be completed and the appropriate box(es) checked if ☐ another person will be jointly obligated with the Borrower on the loan, ☐ the Borrower is relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as a basis for repayment of the loan, or ☐ the Borrower is married and resides, or the property is located, in a community property state.

2. BORROWER	3. CO-BORROWER
Name Age School Yrs.	Name Age School Yrs.
Present Address No. Years ______ ☐ Own ☐ Rent	Present Address No. Years ______ ☐ Own ☐ Rent
Street ______	Street ______
City/State/Zip ______	City/State/Zip ______
Former address if less than 2 years at present address	Former address if less than 2 years at present address
Street ______	Street ______
City/State/Zip ______	City/State/Zip ______
Years at former address ☐ Own ☐ Rent	Years at former address ☐ Own ☐ Rent
Marital Status ☐ Married ☐ Separated ☐ Unmarried (incl. single, divorced, widowed)	Marital Status ☐ Married ☐ Separated ☐ Unmarried (incl. single, divorced, widowed)
Dependents other than listed by Co-Borrower: No. Ages	Dependents other than listed by Borrower: No. Ages
Name and Address of Employer	Name and Address of Employer
Years employed in this line of work or profession? ______ years Years on this job ______ ☐ Self Employed	Years employed in this line of work or profession? ______ years Years on this job ______ ☐ Self Employed
Position/Title Type of Business	Position/Title Type of Business
Social Security Number Home Phone Business Phone	Social Security Number Home Phone Business Phone

4. GROSS MONTHLY INCOME

Item	Borrower	Co-Borrower	Total
Base Empl. Income	$	$	$
Overtime			
Bonuses			
Commissions			
Dividends/Interest			
Net Rental Income			
Other† (Before completing, see notice under Describe Other Income below.)			
Total	$	$	$

5. MONTHLY HOUSING EXPENSE

	Present*	~~Proposed~~
Rent	$	
First Mortgage (P&I)		$
Other Financing (P&I)		
Hazard Insurance		
Real Estate Taxes		
Mortgage Insurance		
Homeowner Assn. Dues		
Other:		
Total Monthly Pmt.	$	$
Utilities		
Total	$	$

6. DETAILS OF PURCHASE

a. Purchase Price	$
b. Total Closing Costs (Est.)	
c. Pre Paid Escrows (Est.)	
d. Total (a+b+c)	$
e. Amount of Mortgage	( )
f. Other Financing	( )
g. Present Equity in Lot	( )
h. Amount of Cash Deposit	( )
i. Closing Costs Paid by Seller	( )
j. Cash Reqd. For Closing (Est.)	$

7. DESCRIBE OTHER INCOME

⇩ B-Borrower C-Co-Borrower	NOTICE: † Alimony, child support, or separate maintenance income need not be revealed if the Borrower or Co-Borrower does not choose to have it considered as a basis for repaying this loan.	Monthly Amount
		$

8. IF EMPLOYED IN CURRENT POSITION FOR LESS THAN TWO YEARS COMPLETE THE FOLLOWING

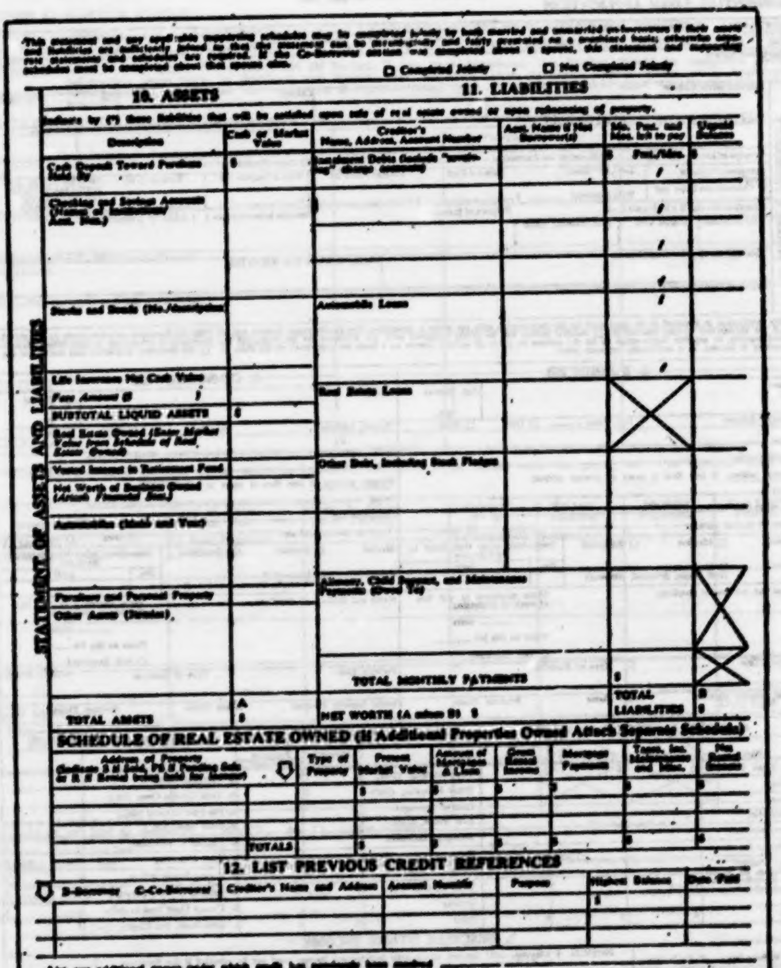
B/C	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Income
						$

9. THESE QUESTIONS APPLY TO BOTH BORROWERS

If a "yes" answer is given to a question in this column, explain on an attached sheet.	Borrower Yes/No	Co-Borrower Yes/No
Have you any outstanding judgments?	______	______
In the last 14 years, have you been bankrupt?	______	______
Have you had property foreclosed upon or given title or a deed in lieu thereof?	______	______
Are you a co-maker or endorser on a note?	______	______
Are you a party in a law suit?	______	______
Are you obligated to pay alimony, child support, or separate maintenance?	______	______
Is any part of the down payment borrowed?	______	______

	Borrower Yes/No	Co-Borrower Yes/No
Do you have health and accident insurance?	______	______
Do you have major medical coverage?	______	______
Do you intend to occupy the property?	______	______
Will this property be your primary residence?	______	______
Have you previously owned a home?	______	______
Sale price of previously owned home	$ ______	$ ______

* All Present Monthly Housing Expenses of the Borrower and Co-Borrower should be listed on a combined basis.



☐ Completed Jointly ☐ Not Completed Jointly

STATEMENT OF ASSETS AND LIABILITIES

10. ASSETS		11. LIABILITIES			
Description	Cash or Market Value	Creditor's Name, Address, Account Number	Acct. Name if Not Borrower's	Mo. Pmt. and Mos. left to pay	Unpaid Balance
Cash Deposit Toward Purchase Held By	$	Installment Debts (include "revolving" charge accounts)		$ Pmt./Mos.	$
Checking and Savings Accounts (Name of Institutions/Acct. Nos.)				/	
				/	
				/	
				/	
Stocks and Bonds (No./description)		Automobile Loans		/	
				/	
Life Insurance Net Cash Value Face Amount ($)		Real Estate Loans		☒	
SUBTOTAL LIQUID ASSETS	$				
Real Estate Owned (Enter Market Value from Schedule of Real Estate Owned)					
Vested Interest in Retirement Fund		Other Debts, Including Stock Pledges			
Net Worth of Business Owned (Attach Financial Stmt.)					
Automobiles (Make and Year)					
		Alimony, Child Support, and Maintenance Payments (Owed To)			☒
Furniture and Personal Property					
Other Assets (Itemize)					
		TOTAL MONTHLY PAYMENTS		$	☒
TOTAL ASSETS	A $	NET WORTH (A minus B) $		TOTAL LIABILITIES	B $

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned Attach Separate Schedule)

Address of Property (Indicate S if Sold, PS if Pending Sale or R if Rental being held for income)	⇩	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins. Maintenance and Misc.	Net Rental Income
			$	$	$	$	$	$
	TOTALS		$	$	$	$	$	$

12. LIST PREVIOUS CREDIT REFERENCES

⇩ B-Borrower C-Co-Borrower	Creditor's Name and Address	Account Number	Purpose	Highest Balance	Date Paid
				$	

List any additional names under which credit has previously been received ____________

AGREEMENT: The Undersigned applies for the loan indicated in this application, to be secured by a first mortgage or deed of trust on the property described herein, and represents that the property will not be used for any illegal or restricted purpose and that all statements made in this application are true and are made for the purpose of obtaining the loan. Verification may be obtained from any source named in this application. The original or a copy of this application will be retained by the lender, even if the loan is not granted.

Borrower's Signature ____________ Date / / Co-Borrower's Signature ____________ Date / /

VOLUNTARY INFORMATION FOR GOVERNMENT MONITORING PURPOSES

BORROWER: I do not wish to furnish this information (initials)

Race/National Origin

☐ American Indian, Alaskan Native ☐ Asian, Pacific Islander ☐ Black ☐ Hispanic ☐ White ☐ Other (specify)

SEX ☐ Female ☐ Male

CO-BORROWER: I do not wish to furnish this information (initials)

Race/National Origin

☐ American Indian, Alaskan Native ☐ Asian, Pacific Islander ☐ Black ☐ Hispanic ☐ White ☐ Other (specify)

SEX ☐ Female ☐ Male

FOR LENDER'S USE ONLY

[42 FR 5679, Jan. 31, 1977]

SUPPLEMENT I—PROCEDURES FOR STATE EXEMPTION

Procedures and criteria under which a State may apply for an exemption pursuant to section 705(g) of the Act and § 202a.11(e) of this part.

(a) *Application.* Any State may apply to the Board pursuant to the provisions of this Supplement and the Board's Rules of Procedure (12 CFR Part 262) for a determination that, under the laws of that State,[1] a class of credit transactions[2] within the State is subject to requirements that are substantially similar to, or provide greater protection for applicants than those imposed under sections 701 and 702 of the Act,[3] and that there is adequate provision for State enforcement of such requirements. The application shall be in writing, addressed to the Board, signed by the Governor, Attorney General, or State official having primary enforcement or interpretive responsibilities under the State law that is applicable to the class of credit transactions, and shall be supported by the documents specified in subsection (b).

(b) *Supporting documents.* The application shall be accompanied by:

(1) A copy of the full text of the State law that is claimed to contain requirements substantially similar to those imposed under sections 701 and 702 of the Act, or to provide greater protection to applicants than sections 701 and 702 of the Act, regarding the class of credit transactions within that State.

(2) A comparison of each provision of sections 701 and 702 of the Act with the corresponding provision of the State law, together with reasons supporting the claim that the corresponding provisions of the State law are substantially similar to, or provide greater protection to applicants than, provisions of sections 701 and 702 of the Act regarding the class of credit transactions and explaining why any differences are not inconsistent with the provisions of sections 701 and 702 of the Act and do not result in a diminution in the protection otherwise afforded applicants; and a statement that no other State laws (including administrative or judicial interpretations) are related to, or would have an effect upon, the State law that is being considered by the Board in making its determination.

(3) A copy of the full text of the State law that provides for enforcement of the State law referred to in subparagraph (b)(1) of this supplement.

(4) A comparison of the provisions of the State law that provides for enforcement with the provisions of sections 704 and 706 of the Act, together with reasons supporting the claim that such State law provides for:

(i) Administrative enforcement of the State law referred to in subparagraph (b)(1) of this supplement that is substantially similar to, or more extensive than, the enforcement provided under section 704 of the Act;

(ii) Civil liability for a failure to comply with the requirements of the State law that is substantially similar to, or more extensive than that provided under section 706 of the Act, including class action liability and the ability of the State Attorney General or other appropriate State official to commence a civil action under circumstances substantially similar to those prescribed in section 706 of the Act, except that such State law may provide a greatert damage remedy or other, more extensive remedies;

(iii) A statute of limitations that prescribes a period for civil actions of substantially similar duration to that provided under section 706(f) of the Act, or a longer period; and

(iv) A scope of discovery relating to a creditor's credit granting standards under appropriate discovery procedures in a court action or agency proceeding that is substantially similar to, or more extensive than, that provided under section 706(j) of the Act.

(5) A statement identifying the office designated or to be designated to administer the State law referred to in subparagraph (b)(1) of this supplement, together with complete information regarding the fiscal arrangements for administrative enforcement (including the amount of funds available or to be provided), the number and qualifications of personnel engaged or to be engaged in enforcement, and a description

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[1] Any reference to State law in this Supplement includes a reference to any regulations that implement State law and formal interpretations thereof by a court of competent jurisdiction or duly authorized agency of that State.

[2] As applicable, references to "class of credit transactions" in this Supplement include one or more of such classes of credit transactions.

[3] Any reference in this Supplement to sections 701 and 702 of the Act includes a reference to the corresponding and implementing provisions of this part, the Board's formal interpretations thereof, and official interpretations or approvals issued by an authorized official or employee of the Federal Reserve System. Additionally, any reference to sections 701 and 702 of the Act includes a reference to section 705 (a), (b), (c), and (d) of the Act and the corresponding provisions of this part, which, though technically not a part of sections 701 and 702, implement and relate to substantive requirements of sections 701 and 702.

of this procedures under which such State law is to be administratively enforced, including, if relevant, administrative enforcement regarding federally-chartered creditors.[4]

The statement should also include reasons to support the claim that there is adequate provision for enforcement of such State law.

(c) *Criteria for determination.* The Board will consider the criteria set forth below, and any other relevant information, in determining whether the law of a State is substantially similar to, or provides greater protection to applicants than, the provisions of sections 701 and 702 of the Act regarding the class of action transactions within that State, and whether there is adequate provision for State enforcement of such law. In making that determination, the Board primarily will consider each provision of the State law in comparison with each corresponding provision in sections 701 and 702 of the Act, and not the State law as a whole in comparison with the Act as a whole.

(1) In order for provisions of State law to be substantially similar to, or provide greater protection to applicants than the provisions of sections 701 and 702 of the Act, the provisions of State law[5] at least shall provide that:

(i) Definitions and rules of construction, as applicable, import the same meaning and have the same application as those prescribed by sections 701 and 702 of the Act.

(ii) Creditors provide all of the applicable notifications required by the provisions of sections 701 and 702 of the Act, with the content and in the terminology, form, and time periods prescribed by this part pursuant to sections 701 and 702; however, required references to State law may be substituted for the references to Federal law required in this part. Notification requirements under State law in additional circumstances or with additional detail that does not frustrate any of the purposes of the Act may be determined by the Board to be consistent with sections 701 and 702 of the Act.

(iii) Creditors take all affirmative actions and abide by obligations substantially similar to or more extensive than. those prescribed by sections 701 and 702 of the Act under substantially similar or more stringent conditions and within the same or more stringent time periods as are prescribed in sections 701 and 702 of the Act.

(iv) Creditors abide by the same or more stringent prohibitions as are prescribed by sections 701 and 702 of the Act.

(v) Obligations or responsibilities imposed on applicants are no more costly, lengthy, or burdensome relative to applicants' exercising any of the rights or gaining the benefits of the protections provided in the State law than corresponding obligations or responsibilities imposed on applicants in sections 701 and 702 of the Act.

(vi) Applicants' rights and protections are substantially similar to, or more favorable than, those provided by sections 701 and 702 of the Act under conditions or within time periods that are substantially similar to, or more favorable to applicants than, those prescribed by sections 701 and 702 of the Act.

(2) In determining whether provisions for enforcement of the State law referred to in subsection (b)(1) of this supplement are adequate, consideration will be given to the extent to which, under State law, provision is made for:

(i) Administrative enforcement, including necessary facilities, personnel, and funding;

(ii) Civil liability for a failure to comply with the requirements of such a State law that is substantially similar to, or more extensive than, that provided under section 706 of the Act.

(iii) A statute of limitations for civil liability of substantially similar or longer duration as that provided under section 706 of the Act; and

(iv) A scope of discovery relating to a creditor's credit granting standards that is substantially similar to, or more extensive than, that provided under section 706(j) of the Act.

(d) *Public notice of filing and proposed rule making.* In connection with any application that has been filed in accordance with the requirements of subsections (a) and (b) of this Supplement and following initial review of the application, a notice of such filing and proposed rule making shall be published by the Board in the FEDERAL REGISTER, and a copy of such application shall be made available for examination by interested persons during business hours at the Board and at the Federal Reserve Bank for each Federal Reserve District in which the State making the application is situated. A period of time shall be allowed from the date of such publication for interested parties to submit written comments to the Board regarding that application.

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[4] Transactions within a State in which a Federally-chartered institution is a creditor shall not be considered subject to exemption, and such Federally-chartered creditors shall remain subject to the requirements of the Act and administrative enforcement by the appropriate Federal authority under section 704 of the Act, unless a State establishes to the satisfaction of the Board that appropriate arrangements have been made with such Federal authorities to assure effective enforcement of the requirements of State laws regarding such creditors.

[5] This subsection is not to be construed as indicating that the Board would consider adversely any additional requirements of State law that are not inconsistent with the purpose of the Act or the requirements imposed under sections 701 and 702 of the Act.

(e) *Exemption from requirements.* If the Board determines on the basis of the information before it that, under the law of a State, a class of credit transactions is subject to requirements substantially similar to, or that provide greater protection to applicants than, those imposed under sections 701 and 702 of the Act and that there is adequate provision for State enforcement, the Board will exempt the class of credit transactions in that State from the requirements of sections 701 and 702 of the Act in the following manner and subject to the following conditions:

(1) Notice of the exemption shall be published in the Federal Register, and the Board shall furnish a copy of such notice to the State official who made application for such exemption, to each Federal authority responsible for administrative enforcement of the requirements of sections 701 and 702 of the Act, and to the Attorney General of the United States. Additionally, the Board shall include any exemption granted in an appropriate listing in Supplement II to this part. Any exemption granted shall be effective 90 days after the date of publication of such notice in the Federal Register.

(2) The appropriate official of any State that receives an exemption shall inform the Board in writing within 30 days of any change in the State laws referred to in subsections (b)(1) and (b)(3) of this supplement. The report of any such change shall contain copies of the full text of that change, together with statements setting forth the information and opinions regarding that change that are specified in subsections (b)(2) and (b)(4) of this supplement. The appropriate official of any State that has received such an exemption also shall file with the Board from time to time such reports as the Board may require.

(3) The Board shall inform the appropriate official of any State that receives such an exemption of any subsequent amendments of the Act (including the implementing provisions of this part, the Board's formal interpretations, and interpretations or approvals issued by an authorized official or employee of the Federal Reserve System) that might necessitate the amendment of State law for the exemption to continue.

(4) No exemption shall extend to the administrative enforcement or civil liability provisions of sections 704 and 706 of the Act. After an exemption is granted, the requirements of the applicable State law shall constitute the requirements of sections 701 and 702 of the Act, except to the extent such State law imposes requirements not imposed by the Act or this part.

(f) *Adverse determination.* (1) If, after publication of a notice in the Federal Register as provided under section (d) of this supplement, the Board finds on the basis of the information before it that it cannot make a favorable determination in connection with the application, the Board shall notify the appropriate State official of the facts upon which such findings are based and shall afford that State authority a reasonable opportunity to demonstrate or achieve compliance.

(2) If, after having afforded the State authority such opportunity to demonstrate or achieve compliance, the Board finds on the basis of the information before it that it still cannot make a favorable determination in connection with the application, the Board shall publish in the Federal Register a notice of its determination regarding the application and shall furnish a copy of such notice to the State official who made application for such exemption.

(g) *Revocation of exemption.* (1) The Board reserves the right to revoke any exemption granted under the provisions of this Supplement if at any time it determines that the State law does not, in fact, impose requirements that are substantially similar to, or that provide greater protection to applicants than, those imposed under sections 701 and 702 of the Act or that there is not, in fact, adequate provision for State enforcement.

(2) Before revoking any such exemption, the Board shall notify the appropriate State official of the facts or conduct that, in the Board's opinion, warrants such revocation, and shall afford that State such opportunity as the Board deems appropriate in the circumstances to demonstrate or achieve compliance.

(3) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Board determines that the State has not done so, notice of the Board's intention to revoke such exemption shall be published as a notice of proposed rule making in the Federal Register. A period of time shall be allowed from the date of such publication for the Board to receive written comments from interested persons to submit written comments to the Board regarding the proposed rule making.

(4) If such exemption is revoked, notice of such revocation shall be published by the Board in the Federal Register, and a copy of such notice shall be furnished to the appropriate State official, to the Federal authorities responsible for enforcement of the requirements of the Act, and to the Attorney General of the United States. The revocation shall become effective, and the class of transactions affected within that State shall become subject to the requirements of sections 701 and 702 of the Act, 90 days after the date of publication of the notice in the Federal Register.

PART 203—HOME MORTGAGE DISCLOSURE

Sec.
203.1 Authority, purpose, and scope.
203.2 Definitions.
203.3 Exemptions.
203.4 Compilation of loan data.
203.5 Disclosure and reporting requirements.
203.6 Administrative enforcement and sanctions for violations.
APPENDIX A—FEDERAL ENFORCEMENT AGENCIES
APPENDIX B—STATE EXEMPTIONS
APPENDIX C—MORTGAGE LOAN DISCLOSURE STATEMENT (HMDA-1)

AUTHORITY: Home Mortgage Disclosure Act of 1975, as amended, Title III, Pub. L. 94-200, 89 Stat. 1125, et seq. (12 U.S.C. 2801-2811).

SOURCE: 46 FR 40683, Aug. 11, 1981, unless otherwise noted.

§ 203.1 Authority, purpose and scope.

(a) *Authority.* This regulation is issued by the Board of Governors of the Federal Reserve System pursuant to the Home Mortgage Disclosure Act of 1975, as amended (Title 12 U.S.C. 2801 through 2811).

(b) *Purpose.* The purpose of this regulation is to provide the public with loan data to determine whether depository institutions are serving the housing needs of the communities and neighborhoods in which they are located. The purpose is also to assist public officials in distributing public sector investments so as to attract private investment to neighborhoods where it is needed. This regulation is not intended to encourage unsound lending practices or the allocation of credit.

(c) *Scope.* This regulation applies to depository institutions that make federally related mortgage loans. It requires a covered depository institution to disclose loan data at certain of its offices and to report the data to its supervisory agency.

(d) *Central data repositories.* The act requires that the loan data be made available at central data repositories located within each standard metropolitan statistical area. It also requires the Federal Financial Institutions Examination Council to aggregate mortgage loan data for all institutions in each standard metropolitan statistical area, showing lending patterns by location, age of housing stock, income level, and racial characteristics. A listing of central data repositories can be obtained from the Department of Housing and Urban Development, Washington, DC 20410, or from any of the agencies listed in Appendix A.

§ 203.2 Definitions.

For the purposes of this regulation, the following definitions apply:

(a) *Act* means the Home Mortgage Disclosure Act of 1975 (Title III of Pub. L. 94-200), as amended in 1980 (Title III of Pub. L. 96-399), codified in Title 12 U.S.C. 2801 through 2811.

(b) *Branch office* means an office approved as a branch of the depository institution by its federal or state supervisory agency, but excludes free-standing automated teller machines and other electronic terminals.

(c) *Depository institution* means a commercial bank, savings bank, savings and loan association, building and loan association, homestead association (including a cooperative bank), or credit union, that makes federally related mortgage loans.[1] A majority-

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[1] "Federally related mortgage loan" means any loan (other than temporary financing such as a construction loan) that

(i) Is secured by a first lien on residential real property (including individual units of condominiums and cooperatives) that is designed principally for the occupancy of from 1 to 4 families and is located in a state; and

(ii)(A) Is made in whole or in part by a depository institution the deposits or accounts of which are insured by an agency of the federal government, or by a depository institution that is regulated by an agency of the Federal Government; or

(B) Is made in whole or in part, or is insured, guaranteed, supplemented or assisted in any way, by the Secretary of Housing and Urban Development or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by any such officer or agency; or

(C) Is intended to be sold by the depository institution that originates the loan to the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage

Continued

owned non-depository subsidiary is deemed to be part of its parent depository institution for the purposes of this regulation. A majority-owned depository subsidiary may, at the parent depository institution's option, be treated as part of its parent or as a distinct entity.

(d) *Federal Housing Authority (FHA), Farmers Home Administration (FmHA), or Veterans Administration (VA) loans* means mortgage loans insured under Title II of the National Housing Act or under Title V of the Housing Act of 1949 or guaranteed under Chapter 37 of Title 38 of the United States Code.

(e) *Home improvement loan* means any loan, including a refinancing, (i) whose proceeds, as stated by the borrower to the lender at the time of the loan application, are to be used for repairing, rehabilitating, or remodeling a residential dwelling located in a state; and (ii) that is recorded on the depository institution's books as a home improvement loan.[2]

(f) *Home purchase loan* means any loan, including a refinancing, secured by and made for the purpose of purchasing residential real property located in a state (including single-family homes, dwellings for from 2 to 4 families, other multi-family dwellings, and individual units of condominiums or cooperatives).[3] The term does not include temporary financing (such as a bridge loan or a construction loan) or the purchase of an interest in a pool of mortgage loans (such as mortgage participation certificates issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Farmers Home Administration).

(g) *State* means any state of the United States of America, the district of Columbia, and the Commonwealth of Puerto Rico.

(h) *Standard metropolitan statistical area or SMSA* means a metropolitan statistical area (MSA) or primary metropolitan statistical area (PMSA), as defined by the U.S. Office of Management and Budget.

[46 FR 40683, Aug. 11, 1981, as amended at 48 FR 56571, Dec. 22, 1983]

§ 203.3 Exemptions.

(a) *Asset size and location.* A depository institution is exempt from all requirements of this regulation

(1) If its total assets on December 31 are $10,000,000 or less; or

(2) If it has neither a home office nor a branch office in a standard metropolitan statistical area (SMSA).

(b) *State law.* A state-chartered depository institution is exempt from the requirements of this regulation if it is subject to State laws that contain, as determined by the Board in accordance with Appendix B, (1) requirements substantially similar to those imposed by this regulation, and (2) adequate provisions for enforcement. For purposes of data aggregation, however, an institution exempted under this paragraph shall submit the data required by the disclosure laws of its state to its State supervisory agency.

(c) *Change of status.* (1) An institution that becomes subject to the requirements of this regulation shall compile loan data beginning with the calendar year following the year in which it becomes subject, except that:

(2) An institution that is exempt under § 203.3(b) and that subsequently loses its exemption shall compile loan data in compliance with this regulation beginning with the calendar year following the year for which it last reported loan data under the State disclosure law.

[46 FR 40683, Aug. 11, 1981, as amended at 48 FR 56571, Dec. 22, 1983]

§ 203.4 Compilation of loan data.

(a) *Data to be included.* A depository institution shall compile data on the number and total dollar amount[4] of

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Corporation, or to a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation.

[2] An institution may categorize a first-lien loan made for home improvement purposes as a home purchase loan if that is the manner in which it normally records first-lien loans.

[3] See footnote 2.

[4] "Total dollar amount" means (i) the original principal amount of loans originat-

Continued

home purchase and home improvement loans that it originates and purchases, for each calendar year beginning with calendar year 1981.

(b) *Format.* The loan data shall be compiled separately for originations and purchases, using the form set forth in Appendix C, and shall be itemized as follows:

(1) *Geographic itemization.* The loan data shall be itemized by standard metropolitan statistical area (SMSA). Within each SMSA, the data shall be further itemized by the census tract in which the property to be purchased or improved is located, except that

(i) If the property is located in a county with a population[5] of 30,000 or less or in an area that has not been assigned census tracts, itemization by county shall be used instead of itemization by census tract.

(ii) If the property is located outside any SMSA, or is located in an SMSA in which the institution has neither a home nor a branch office, no itemization (by SMSA, county, or census tract) is required and the data for all such loans shall instead be listed as an aggregate sum.

(2) *Type-of-loan itemization.* The loan data within each geographic category described in paragraph (b)(1) of this section shall be further itemized as follows:

(i) FHA, FmHA, and VA loans on 1-to-4 family dwellings;

(ii) Other home purchase (conventional) loans on 1-to-4 family dwellings;

(iii) Home improvement loans on 1-to-4 family dwellings;

(iv) Total home purchase and home improvement loans on dwellings for more than 4 families; and

(v) Total home purchase and home improvement loans on 1-to-4 family dwellings (from categories (i), (ii), and (iii) above) made to any borrower who did *not*, at the time of the loan application, intend to use the property as a principal dwelling.[6] This addendum item is not required for loans on property in the outside-SMSAs category described in paragraph (b)(1)(ii) of this section.

(c) *Excluded data.* A depository institution shall not disclose loan data for

(1) Loans originated and purchased by the depository institution acting as trustee or in some other fiduciary capacity;

(2) Loans on unimproved land; or

(3) Refinancings that the depository institution originates, if there is no increase in the principal that is outstanding on the existing loan at the time of the refinancing and if the institution and the borrower are the same parties on the existing loan and the refinancing.

(d) *SMSAs and census tracts.* For purposes of geographic itemization—

(1) A depository institution shall use the SMSA boundaries defined by the U.S. Office of Management and Budget as of the first day of the calendar year for which the data are compiled.

(2) A depository institution shall use the census tract numbers and boundaries on the census tract maps in the "1980 Census of Population and Housing, CENSUS TRACTS, PHC80-2" series prepared by the Bureau of the Census.[7] If a census tract number is

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ed by the depository institution (to the extent of its ownership interest, when the loan is made jointly or cooperatively) and (ii) the unpaid balance of loans purchased by the depository institution (to the extent of its ownership interest in such purchased loans). For home improvement loans, whether originated or purchased, the amount to be reported may include unpaid finance charges.

[5] The population is to be determined by reference to the "1980 Census of Population, NUMBER OF INHABITANTS, PC80-1-A" series prepared by the Bureau of the Census, U.S. Department of Commerce, Washington, DC 20233. Until this publication becomes available, county population shall be determined using the "1980 Census of Population and Housing, FINAL POPULATION AND HOUSING UNIT COUNTS (Advance Reports), PHC80-V" series, also prepared by the Bureau of the Census.

[6] A depository institution may assume, unless its records contain information to the contrary, that a loan that it purchases does not fall within this category.

[7] An institution may use either 1970 or 1980 census tract boundaries in geocoding loans in an SMSA until the 1980 census tract outline maps for that SMSA become available from the Bureau of the Census.

duplicated within an SMSA, then the census tract shall also be identified by county, city, or town name.

[46 FR 40683, Aug. 11, 1981, as amended at 48 FR 56571, Dec. 22, 1983]

§ 203.5 Disclosure and reporting requirements.

(a) *Time requirements for disclosure statements.* A depository institution shall make its loan data disclosure statements available to the public by March 31 following the calendar year for which the data were compiled, and shall continue to make them available for five years from that date.

(b) *Offices at which disclosure statements are to be made available.* (1) A depository institution shall make a complete disclosure statement available at its home office.

(2) A depository institution shall also make a disclosure statement available in at least one branch office in each SMSA where it has offices, other than the SMSA in which the home office is located. The statement at a branch office may omit, at the option of the institution, all data other than the data relating to property located in the SMSA where that branch is located.

(3) Upon request, a depository institution shall promptly provide information regarding the office(s) of the institution where its disclosure statements are available.

(c) *Manner of making disclosure statements available.* A depository institution shall make its loan data disclosure statements available to anyone requesting them for inspection or copying during the hours the office is normally open to the public for business. A depository institution that provides photocopying facilities may impose a reasonable charge for this service.

(d) *Notice of availability.* A depository institution shall provide notice of the availability of its mortgage loan data by posting a notice in the lobbies of its home and branch offices that are located in SMSAs.

(e) *Reporting requirements.* For purposes of data aggregation, a depository institution shall send two copies of its complete disclosure statement to the regional office of its enforcement agency by March 31 following the calendar year for which the data were compiled.

§ 203.6 Administrative enforcement and sanctions for violations.

(a) *Administrative enforcement.* As set forth more fully in sections 305(b) and 306(b) of the act, compliance with the act and this regulation is enforced by the Comptroller of the Currency, the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration.

(b) *Sanctions for violations.* (1) A violation of the act or this regulation is subject to administrative sanctions as provided in section 305(c) of the act.

(2) An error in compiling or disclosing required data is not considered a violation of the act or this regulation if the error was unintentional and resulted from a *bona fide* mistake despite the maintenance of procedures reasonably adapted to avoid such an error.

APPENDIX A—FEDERAL ENFORCEMENT AGENCIES

The following list indicates which federal agency enforces Regulation C for particular classes of institutions. Any questions concerning compliance by a particular institution should be directed to the appropriate enforcing agency.

National Banks

Comptroller of the Currency, Office of Customer and Community Programs, Washington, DC 20219

State Member Banks

Federal Reserve Bank Serving the district in which the state member bank is located.

Nonmember Insured Banks and Mutual Savings Banks

Federal Deposit Insurance Corporation Regional Director for the region in which the bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC)

The Federal Home Loan Bank Board Supervisory Agency in the district in which the institution is located.

Credit Unions

Office of Consumer Affairs, National Credit Union Administration, 1776 G Street, N.W., Washington, DC 20456

Other Depository Institutions

Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

APPENDIX B—STATE EXEMPTIONS

(a) *Application.* Any State,[1] State-chartered depository institution, or association of such depository institutions may apply to the Board pursuant to this appendix and the Board's Rules of Procedure (12 CFR Part 262) for an exemption under § 203.3(b). Such an exemption requires a determination that a State-chartered depository institution is subject to State law requirements[2] substantially similar to those imposed by this regulation, and that there is adequate provision for enforcement of those requirements.

(b) *Supporting documents.* The application, which may be made by letter, shall include:

(1) A copy of the full text of the relevant State law, including provisions for enforcement;

(2) A statement of reasons why the State requirements are substantially similar to those imposed by the Act and this regulation, including an explanation why any differences are not significant; and

(3) An undertaking to inform the Board within 30 days of the occurrence of any change in the relevant State law.

(c) *Public notice of filing.* The Board will publish in the FEDERAL REGISTER notice of the filing of an application that complies with the above requirements. A copy of the application will be made available for examination during business hours at the Board and at the Federal Reserve Bank of each Federal Reserve District in which the applicant is situated. The Board will provide a period of time for interested persons to submit written comments. For multiple applications concerning the same State law, the Board may (1) consolidate the notice of receipt of all such applications in one FEDERAL REGISTER notice, and (2) dispense with publication of notice of applications subsequently received.

(d) *Grant of exemption.* If the Board determines that some or all State-chartered depository institutions are subject to requirements substantially similar to those imnposed by this regulation, and that there is adequate provision for enforcement, the Board will exempt such institution(s) from the requirements of this regulation (except as specified in § 203.3(b) by publishing notice of the exemption in the FEDERAL REGISTER. The Board also will furnish a copy of the notice to the applicant, to each State authority responsible for administrative enforcement of the State law, to the regulatory authorities specified in section 305(b) of the Act, and to each participant in the proceeding.

(e) *Subsequent amendments; revocation of exemption.* (1) The Board will inform the appropriate State official of any subsequent amendments to this regulation (including published interpretations of the Board) that might require amendment of the State law. The Board may require reapplication for an exemption.

(2) The Board reserves the right to revoke an exemption if at any time it determines that State law does not in fact impose requirements substantially similar to those imposed by this regulation, or that there is not in fact adequate provision for enforcement.

(3) The Board will publish notice of its intent to revoke an exemption in the FEDERAL REGISTER and will send the notice to the appropriate State official. The Board will allow time after publication for interested persons to submit written comments.

(4) If an exemption is revoked, the Board will publish notice of the revocation in the FEDERAL REGISTER and will send a copy of the notice to the appropriate State official and to the regulatory authorities specified in section 305(b) of the Act.

(5) The Board may dispense with the procedures set forth in this section in any case in which it finds such procedures unnecessary.

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[1] "State" includes any subdivision of a State.

[2] "State law" includes any regulations which implement the law, any official interpretations of the law, and regulations of a State agency or department that has jurisdiction over a class(es) of depository institutions.

MORTGAGE LOAN DISCLOSURE STATEMENT

WHO MUST FILE.

1. This form must be filed by depository institutions that
   a. have assets of more than $10 million,
   b. make first lien loans on 1-to-4 family residential real property, and
   c. are located in standard metropolitan statistical areas (SMSAs).
2. Institutions that have been exempted by the Federal Reserve Board because they are covered by a similar state mortgage loan disclosure law will instead complete and file the disclosure form required by their state law.

WHEN AND WHERE TO FILE.

1. The institution must send two copies of the disclosure statement to the regional office of its federal enforcement agency no later than March 31 following the calendar year for which the loan data were compiled.
2. The institution also must make its disclosure statement available no later than March 31 for examination by the public.

INSTRUCTIONS FOR COMPLETION OF FORM

DATA TO BE SHOWN.

1. The institution must show the data on residential mortgage and home improvement loans that were originated and purchased during the calendar year covered by the statement.
2. Data for each category on the statement must show both the number of loans and the total dollar amount of loans.
3. Data for loans originated by the institution are to be shown in Part A and data for loans purchased in Part B.
4. Dollar amounts are to be rounded to the nearest thousand ($500 will be rounded up), and shown in terms of thousands.

DATA TO BE EXCLUDED.

1. Do not report loans that, although secured by real estate, are made *for purposes other than* the purchase of residential real estate or home improvement (for example, a loan secured by residential real property for purposes of financing education, a vacation, or business operations).
2. Also exclude from disclosure: construction loans and other temporary financing; loans made or purchased by the institution acting in a fiduciary capacity (by the institution's trust department, for example); loans on unimproved land; and refinancings of loans originated by the institution that involve no increase in the outstanding principal (provided the parties to the loan remain the same).

GEOGRAPHIC ITEMIZATION (Grouping of loan data by SMSA, census tract or county, and outside-SMSA).

1. Loan data are to be itemized separately for each SMSA in which the institution has a home or branch office. A separate page must be used for each SMSA. (See item 4 below for treatment of loans on property outside such SMSAs.) The institution must use the SMSA boundaries as defined by the U.S. Department of Commerce on January 1 of the calendar year for which the loan data are compiled.
2. Loan data on property *within an SMSA* shall be further itemized by the census tract in which the property is located, except that the loan data shall be itemized by county instead of census tract when the property to which the loan relates is located
   a. in an area that is not divided into census tracts on the Census Bureau's census tract outline maps; or
   b. in a county with a population of 30,000 or less. (Note: To determine population, use the Census Bureau's PC80-1-A population series. If that series is not yet available for a particular county, use the PHC80-V series.)
3. To determine census tract numbers and SMSA boundaries, the institution should consult the Census Bureau's census tract outline maps.

   (The institution should use the Census Bureau's PHC80-2 series for the 1980 census if it is available for the particular SMSA. Until the series is available, the institution may use the Census Bureau's PHC(1) series maps for 1970, or it may use 1980 data from the Census Bureau (such as the GBF/DIME files) or from a private publisher.

   The institution should indicate on the statement whether it has used 1970 or 1980 census tracts. An institution using 1970 census tracts for a given SMSA must use them for the entire calendar year, even if the PHC80-2 maps for that SMSA become available during the year.)
4. If the property to which the loan relates is located outside SMSAs in which the reporting institution has a home or branch office, or outside any SMSA, the loan data should be listed as an aggregate sum in Section 2 of the form; no geographic itemization is necessary.
5. Institutions that have a home or branch office in the New York City/New Jersey SMSA should note that there are duplicate census tract numbers in New York City. There may also be duplicate numbers in other SMSAs. When reporting loan data relating to property in these SMSAs, the institutions must indicate the county name in addition to the tract number.

TYPE-OF-LOAN ITEMIZATION (Itemization of each geographic grouping into loan categories).

1. Column A:

   FHA, FmHA, and VA loans on 1-to-4 family dwellings. This category includes loans that are secured by liens (both first and junior liens) *and* that are made for the purpose of purchasing residential real property *and* that have FHA, FmHA, and VA insurance or guarantee. It includes refinancings (but see item 2 under DATA TO BE EXCLUDED). It may include, at an institution's option, first lien loans for home improvement purposes if the institution normally classifies first lien loans as purchase loans. It does *not* include FHA Title I loans, which are to be entered in column C.
2. Column B:

   Other *home purchase loans* ("*conventional*" *loans*) on 1-to-4 family dwellings. This category includes loans

secured by liens (both first and junior liens) *and* made for the purpose of purchasing residential real property, other than FHA, FmHA, and VA loans. It includes refinancings (but see item 2 under DATA TO BE EXCLUDED). It may include, at an institution's option, first lien loans for home improvement purposes if the institution normally classifies first lien loans as purchase loans.

3. Column C:

***Home improvement loans* on 1-to-4 family dwellings. This category is limited to any loan, including a refinancing, that is to be used for repairing, rehabilitating, or remodeling a residential dwelling *and* that is recorded on the institution's books as a home improvement loan. It includes both secured and unsecured loans.**

4. Column D:

***Loans on multi-family dwellings* (5 or more families). This category includes home purchase and home improvement loans—that is, it covers the same types of loans as are covered in columns A, B, and C. The difference is that those columns relate to loans on 1-to-4 family dwellings, whereas column D relates to loans on dwellings for 5 or more families.**

5. Column E:

***Non-occupant loans* on 1-to-4 family dwellings. This is an addendum category for reporting those home purchase and home improvement loans on 1-to-4 family dwellings (recorded in columns A, B, and C) that were made to a borrower who did *not*, at the time of the loan application, intend to use the property as a principal dwelling. A depository institution may assume, unless its records contain information to the contrary, that a loan it purchases does not fall within this category.**

FRB HMDA-1
OMB No. 7100-0090
Approval expires September 1984

MORTGAGE LOAN DISCLOSURE STATEMENT

Report for loans made in 19 ____

This report is required by law (12 U.S.C. 2801-2811 and 12 CFR 203).

Depository Institution

Name ____________________

Address ____________________

Enforcement Agency for this Institution

Name ____________________

Address ____________________

Census tract series used: ____ 1970 series ____ 1980 series

SMSA (location of property) ____________________

PART A—ORIGINATIONS

SECTION 1—LOANS ON PROPERTY LOCATED WITHIN THOSE SMSAs IN WHICH INSTITUTION HAS HOME OR BRANCH OFFICES

CENSUS TRACT (in numerical sequence) where property located or COUNTY (name) where property located	Loans on 1 - to - 4 family dwellings						Loans on Multi-family Dwellings for 5 or more families (home purchases and home improvement)		Addendum Item: Non-occupant Loans on 1 - to - 4 family dwellings	
	Home Purchase Loans				Home Improvement Loans					
	FHA, FmHA, and VA		Other ("Conventional")							
	A		B		C		D		E	
	No. of Loans	Principal Amount (Thousands)	No. of Loans	Principal Amount (Thousands)	No. of Loans	Principal Amount (Thousands)	No. of Loans	Principal Amount (Thousands)	No. of Loans	Principal Amount (Thousands)
SMSA TOTAL										

SECTION 2—LOANS ON ALL PROPERTY LOCATED ELSEWHERE

▨									▨	▨

PART B—PURCHASES

SECTION 1—DATA FOR PROPERTY LOCATED WITHIN THOSE SMSAs IN WHICH INSTITUTION HAS HOME OR BRANCH OFFICES

CENSUS TRACT (in numerical sequence) where property located or COUNTY (name) where property located	Loans on 1- to- 4 family dwellings						Loans on Multi-family Dwellings for 5 or more families (home purchase and home improvement)		Addendum Item: Non-occupant Loans on 1- to- 4 family dwellings	
	Home Purchase Loans				Home Improvement Loans					
	FHA, FmHA, and VA		Other ("Conventional")							
	A		B		C		D		E	
	No. of Loans	Principal Amount (Thousands)	No. of Loans	Principal Amount (Thousands)	No. of Loans	Principal Amount (Thousands)	No. of Loans	Principal Amount (Thousands)	No. of Loans	Principal Amount (Thousands)
SMSA TOTAL										

SECTION 2—LOANS ON ALL PROPERTY LOCATED ELSEWHERE

▨									▨	▨

[47 FR 751, Jan. 7, 1982]

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

Sec.

204.1 Authority, purpose and scope.
204.2 Definitions.
204.3 Computation and maintenance.
204.4 Transitional adjustments.
204.5 Emergency reserve requirement.
204.6 Supplemental reserve requirement.
204.7 Penalties.
204.8 International banking facilities.
204.9 Reserve requirement ratios.
204.121 Bankers' banks.
204.122 Secondary market activities of international banking facilities.
204.123 Sale of Federal funds by investment companies or trusts in which the entire beneficial interest is held exclusively by depository institutions.
204.124 Repurchase agreement involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and Federal agency securities.

AUTHORITY: Secs. 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C 461, 601, 611); and sec. 7 of the International Banking Act of 1978 (12 U.S.C 3105), unless otherwise noted.

§ 204.1 Authority, purpose and scope.

(a) *Authority.* This part is issued under the authority of section 19 (12 U.S.C. 461 *et seq.*) and other provisions of the Federal Reserve Act and of section 7 of the International Banking Act of 1978 (12 U.S.C. 3105).

(b) *Purpose.* This part relates to reserves that depository institutions are required to maintain for the purpose of facilitating the implementation of monetary policy by the Federal Reserve System.

(c) *Scope.* (1) The following depository institutions are required to maintain reserves in accordance with this part:

(i) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or any bank that is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(ii) Any savings bank or mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(f), (g));

(iii) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)) or any credit union that is eligible to apply to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(iv) Any member as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(4)); and

(v) Any insured institution as defined in section 401 of the National Housing Act (12 U.S.C. 1724(a)) or any institution which is eligible to apply to become an insured institution under section 403 of such Act (12 U.S.C. 1726).

(2) Except as may be otherwise provided by the Board, a foreign bank's branch or agency located in the United States is required to comply with the provisions of this part in the same manner and to the same extent as if the branch or agency were a member bank, if its parent foreign bank (i) has total worldwide consolidated bank assets in excess of $1 billion; or (ii) is controlled by a foreign company or by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1 billion. In addition, any other foreign bank's branch located in the United States that is eligible to apply to become an insured bank under section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) is required to maintain reserves in accordance with this part as a nonmember depository institution.

(3) Except as may be otherwise provided by the Board, an Edge Corporation (12 U.S.C. 611 *et seq.*) or an Agreement Corporation (12 U.S.C. 601 *et seq.*) is required to comply with the provisions of this part in the same manner and to the same extent as a member bank.

(4) This part does not apply to any financial institution that (i) is organized solely to do business with other financial institutions; (ii) is owned primarily by the financial institutions with which it does business; and (iii) does not do business with the general public.

(5) The provisions of this part do not apply to any deposit that is payable only at an office located outside the United States.

[45 FR 56018, Aug. 22, 1980]

§ 204.2 Definitions.

For purposes of this part, the following definitions apply unless otherwise specified:

(a)(1) *"Deposit"* means:

(i) The unpaid balance of money or its equivalent received or held by a depository institution in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to an account, including interest credited, or which is evidenced by an instrument on which the depository institution is primarily liable;

(ii) Money received or held by a depository institution, or the credit given for money or its equivalent received or held by the depository institution in the usual course of business for a special or specific purpose, regardless of the legal relationships established thereby, including escrow funds, funds held as security for securities loaned by the depository institution, funds deposited as advance payment on subscriptions to United States government securities, and funds held to meet its acceptances;

(iii) An outstanding draft, cashier's check, money order, or officer's check drawn on the depository institution and issued in the usual course of business for any purpose, including payment for services, dividends, or purchases;

(iv) Any due bill or other liability or undertaking on the part of a depository institution to sell or deliver securities to, or purchase securities for the account of, any customer (including another depository institution), involving either the receipt of funds by the depository institution, regardless of the use of the proceeds, or a debit to an account of the customer before the securities are delivered. A deposit arises thereafter, if after three business days from the date of issuance of the obligation, the depository institution does not deliver the securities purchased or does not fully collateralize its obligation with securities similar to the securities purchased. A security is similar if it is of the same type and if it is of comparable maturity to that purchased by the customer;

(v) Any liability of a depository institution's affiliate that is not a depository institution, on any promissory note, acknowledgment of advance, due bill, or similar obligation (written or oral), with a maturity of less than four years, to the extent that the proceeds are used to supply or to maintain the availability of funds (other than capital) to the depository institution, except any such obligation that, had it been issued directly by the depository institution, would not constitute a deposit. If an obligation of an affiliate of a depository institution is regarded as a deposit and is used to purchase assets from the depository institution, the maturity of the deposit is determined by the shorter of the maturity of the obligation issued or the remaining maturity of the assets purchased. If the proceeds from an affiliate's obligation are placed in the depository institution in the form of a reservable deposit, no reserves need be maintained against the obligation of the affiliate since reserves are required to be maintained against the deposit issued by the depository institution. However, the maturity of the deposit issued to the affiliate shall be the shorter of the maturity of the affiliate's obligation or the maturity of the deposit;

(vi) Credit balances;

(vii) Any liability of a depository institution on any promissory note, acknowledgment of advance, bankers' acceptance, or similar obligation (written or oral), including mortgage-backed bonds, that is issued or undertaken by a depository institution as a means of obtaining funds, except any such obligation that:

(A) Is issued or undertaken and held for the account of:

(*1*) An office located in the United States of another depository institution, foreign bank, Edge or Agreement Corporation, or New York Investment (Article XII) Company;

(*2*) The United States government or an agency thereof; or

(*3*) The Export-Import Bank of the United States, Minbanc Capital Corporation, the Government Development Bank for Puerto Rico, a Federal Reserve Bank, a Federal Home Loan Bank, or the National Credit Union

Administration Central Liquidity Facility;

(B) Arises from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States Government or any agency thereof that the depository institution is obligated to repurchase;

(C) Is not insured by a Federal agency, is subordinated to the claims of depositors, has a weighted average maturity of seven years or more, is not subject to Federal interest rate limitations, and is issued by a depository institution with the approval of, or under the rules and regulations of, its primary Federal supervisor;

(D) Arises from a borrowing by a depository institution from a dealer in securities, for one business day, of proceeds of a transfer of deposit credit in a Federal Reserve Bank or other immediately available funds (commonly referred to as "Federal funds"), received by such dealer on the date of the loan in connection with clearance of securities transactions; or

(E) Arises from the creation, discount and subsequent sale by a depository institution of its bankers' acceptance of the type described in paragraph 7 of section 13 of the Federal Reserve Act (12 U.S.C. 372).

(viii) Any liability of a depository institution that arises from the creation after June 20, 1983, of a bankers' acceptance that is not of the type described in paragraph 7 of section 13 of the Federal Reserve Act (12 U.S.C. 372) except any such liability held for the account of an entity specified in § 204.2(a)(1)(vii)(A); or

(2) *"Deposit"* does not include:

(i) Trust funds received or held by the depository institution that it keeps properly segregated as trust funds and apart from its general assets or which it deposits in another institution to the credit of itself as trustee or other fiduciary. If trust funds are deposited with the commecial department of the depository institution or otherwise mingled with its general assets, a deposit liability of the institution is created;

(ii) An obligation that represents a conditional, contingent or endorser's liability;

(iii) Obligations, the proceeds of which are not used by the depository institution for purposes of making loans, investments, or maintaining liquid assets such as cash or "due from" depository institutions or other similar purposes. An obligation issued for the purpose of raising funds to purchase business premises, equipment, supplies, or similar assets is not a deposit;

(iv) Accounts payable;

(v) Hypothecated "deposits" created by payments on an installment loan where (A) the amounts received are not used immediately to reduce the unpaid balance due on the loan until the sum of the payments equals the entire amount of loan principal and interest; (B) and where such amounts are irrevocably assigned to the depository institution and cannot be reached by the borrower or creditors of the borrower;

(vi) Dealer reserve and differential accounts that arise from the financing of dealer installment accounts receivable, and which provide that the dealer may not have access to the funds in the account until the installment loans are repaid, as long as the depository institution is not actually (as distinguished from contingently) obligated to make credit or funds available to the dealer;

(vii) A dividend declared by a depository institution for the period intervening between the date of the declaration of the dividend and the date on which it is paid;

(viii) An obligation representing a "pass through account," as defined in this section;

(ix) An obligation arising from the retention by the depository institution of no more than a 10 per cent interest in a pool of conventional 1–4 family mortgages that are sold to third parties;

(x) An obligation issued to a State or municipal housing authority under a loan-to-lender program involving the issuance of tax exempt bonds and the subsequent lending of the proceeds to the depository institution for housing finance purposes;

(xi) Shares of a credit union held by the National Credit Union Administration or the National Credit Union Administration Central Liquidity Facility under a statutorily authorized assistance program; and

(xii) Any liability of a United States branch or agency of a foreign bank to another United States branch or agency of the same foreign bank, or the liability of the United States office of an Edge Corporation to another United States office of the same Edge Corporation.

(b)(1) *"Demand deposit"* means a deposit that is payable on demand, or a deposit issued with an original maturity or required notice period of less than seven days, or a deposit representing funds for which the depository institution does not reserve the right to require at least seven days' written notice of an intended withdrawal. The term includes all deposits other than time and savings deposits. Demand deposits may be in the form of (i) checking accounts; (ii) certified, cashier's and officer's checks (including checks issued by the depository institution in payment of dividends); (iii) traveler's checks and money orders that are primary obligations of the issuing institution; (iv) checks or drafts drawn by, or on behalf of, a non-United States office of a depository institution on an account maintained at any of the institution's United States offices; (v) letters of credit sold for cash or its equivalent; (vi) withheld taxes, withheld insurance and other withheld funds; (vii) time deposits that have matured or time deposits upon which the required notice of withdrawal period has expired and which have not been renewed (either by action of the depositor or automatically under the terms of the deposit agreement); and (viii) an obligation to pay on demand or within seven days a check (or other instrument, device, or arrangement for the transfer of funds) drawn on the depository institution, where the account of the institution's customer already has been debited. The term does not include an obligation that is a time deposit under § 204.2(c)(1)(ii).

(2) (A) "demand deposit" does not include checks or drafts drawn by the depository institution on the Federal Reserve or on another depository institution.

(c)(1) *"Time deposit"* means (i) a deposit that the depositor does not have a right to withdraw for a period of seven days or more after the date of deposit. "Time deposit" includes funds:

(A) Payable on a specified date not less than seven days after the date of deposit;

(B) Payable at the expiration of a specified time not less than seven days after the date of deposit;

(C) Payable upon written notice which actually is required to be given by the depositor not less than seven days before the date of repayment;

(D) Such as "Christmas club" accounts and "vacation club" accounts, that are deposited under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than three months even though some of the deposits may be made within seven days from the end of the period; or

(E) That constitute a "savings deposit" which is not regarded as a "transaction account" and

(ii) Borrowings, regardless of maturity, represented by a promissory note, an acknowledgment of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptance (other than the type described in 12 U.S.C. 372) of the depository institution held by, any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States, to any office located outside the United States of a foreign bank, or to institutions whose time deposits are exempt from interest rate limitations under § 217.3(g) of Regulation Q (12 CFR 217.3(g)(e),

(iii) A deposit or account issued pursuant to 12 CFR 1204.121, including those with an original maturity or required notice period of seven to 13 days; or for depository institutions not subject to the rules of the Depository Institutions Deregulation Committee under 12 U.S.C. 3501 *et seq.*, a deposit or account issued with an original maturity or required notice period of seven to 13 days if such deposit or account is nonnegotiable, and is not otherwise a transaction account under § 204.2(e) of this part.

(2) A time deposit may be represented by a transferable or nontransferable, or a negotiable or nonnegotiable, certificate, instrument, passbook, statement, or otherwise. A "time deposit" includes share certificates and certificates of indebtedness issued by credit unions, and certificate accounts and notice accounts issued by savings and loan associations.

(d)(1) *"Savings deposit"* means a deposit or account:

(i)(A) With respect to which the depositor is not required by the deposit contract but may at any time be required by the depository institution to give written notice of an intended withdrawal not less than seven days before withdrawal is made, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit; and

(B) For depository institutions subject to 12 CFR Part 217 or 12 CFR Part 329, funds deposited to the credit of, or in which any beneficial interest is held by, a corporation, association, partnership or other organization operated for profit do not exceed $150,000 per depositor at the depository institution; or

(ii) Issued pursuant to 12 CFR 1204.122 under which the depository institution reserves the right to require at least seven days' notice of an intended withdrawal before withdrawal is made, or for depository institutions not subject to the rules of the Depository Institutions Deregulation Committee under 12 U.S.C. 3501 *et seq.*, a deposit or account under which the depository institution reserves the right to require at least seven days' notice of an intended withdrawal before withdrawal is made.

(2) A deposit may continue to be classified as a savings deposit even if the depository institution exercises its right to require notice of withdrawal.

(3) A "savings deposit" includes a regular share account at a credit union and a regular account at a savings and loan association.

(4) "Savings deposit" does not include funds deposited to the credit of the depository institution's own trust department where the funds involved are utilized to cover checks or drafts. Such funds are "transaction accounts."

(e)(1) "Transaction account" means a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar device for the purpose of making payments or transfers to third persons or others. "Transaction account" includes:

(i) Demand deposits;

(ii) Deposits or accounts subject to check, draft, negotiable order of withdrawal, share draft, or other similar item;

(iii) Savings deposits or accounts in which withdrawals may be made automatically through payment to the depository institution itself or through transfer of credit to a demand deposit or other account in order to cover checks or drafts drawn upon the institution or to maintain a specified balance in, or to make periodic transfers to, such accounts (automatic transfer accounts);

(iv) Deposits or accounts in which payments may be made to third parties by means of an automated teller machine, remote service unit or other electronic device;

(v) Deposits or accounts in which payments may be made to third parties by means of a debit card;

(vi) Except as provided in paragraph (e)(2) of this section, deposits or accounts under the terms of which, or which by practice of the depository institution, the depositor is permitted or authorized to make more than three withdrawals per month for purposes of transferring funds to another account or for making a payment to a third party by means of preauthorized or telephone agreement, order or instruction. An account that permits or authorizes more than three such withdrawals in a calendar month, or statement cycle (or similar period) of at least four weeks, is a "transaction account" whether or not more than three such withdrawals actually are made during such period. A "preauthorized transfer" includes any arrangement by the depository institution to pay a third party from the account of a depositor upon written or oral instruction (including an order received through an automated clearing house (ACH)), or any arrangement by a depository institution to pay a third party from the account of the depositor at a predetermined time or on a fixed schedule. An account is not a "transaction account," under paragraph (e)(1)(vi) of this section, by virtue of an arrangement that permits withdrawals for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer);

(vii) Deposits or accounts maintained in connection with an arrangement that permits the depositor to obtain credit directly or indirectly through the drawing of a negotiable or nonnegotiable check, draft, order or instruction or other similar device (including telephone or electronic order or instruction) on the issuing institution that can be used for the purpose of making payments or transfers to third persons or others, or to a deposit account of the depositor. Deposits that are subject to arrangements established before October 5, 1982, will not be regarded as transaction accounts (A) until the deposit issued in connection with the line of credit is extended, or matures and is renewed, or (B) if the deposit issued in connection with the line of credit matures and is automatically renewed on or before December 31, 1982; and

(viii) A deposit or account issued pursuant to 12 CFR 1204.122 (or, for a depository institution that is not subject to the rules of the Depository Institutions Deregulation Committee under 12 U.S.C. 3501 *et seq.*, a deposit or account under which the depository institution reserves the right to require seven days' notice of an intended withdrawal prior to withdrawal) and under the terms of which, or which by practice of the depository institution, the depositor is permitted or authorized to make more than six transfers per calendar month, or statement cycle (or similar period) of at least four weeks to another account of the same depositor at the same institution, to the institution itself or to a third party by means of preauthorized, automatic, or telephone agreement, order, or instruction or, within these transfers, to draw more than three checks or drafts per calendar month or statement cycle (or similar period) of at least four weeks. An account that authorizes transfers in excess of these limits is a transaction account whether or not the depositor actually makes any transfers.

(2) Not withstanding paragraphs (e)(1)(ii), (1)(iii), (1)(iv), and (1)(v) of this section, a "transaction account" does not include a deposit or account issued pursuant to 12 CFR 1204.122 (or, for a depository institution that is not subject to the rules of the Depository Institutions Deregulation Committee under 12 U.S.C. 3501 *et seq.*, a deposit or account under which the depository institution reserves the right to require seven days' notice of an intended withdrawal prior to withdrawal) under the terms of which the depositor is not permitted or authorized to make more than six transfers per calendar month, or statement cycle (or similar period) of at least four weeks, to another account of the depositor at the same institution, to the institution itself, or to a third party by means of preauthorized, automatic or telephone agreement, order, or instruction and no more than three of such six transfers may be by checks or drafts drawn by the depositor.

(f)(1) *"Nonpersonal time deposit"* means:

(i) A time deposit, including a savings deposit, that is not a transaction account, representing funds in which any beneficial interest is held by a depositor which is not a natural person;

(ii) A time deposit, including a savings deposit that is not a transaction account, that represents funds deposited to the credit of a depositor that is not a natural person, other than a deposit to the credit of a trustee or other fiduciary if the entire beneficial interest in the deposit is held by one or more natural persons;

(iii) A time deposit that is transferable, except a time deposit originally issued before October 1, 1980, to and held by one or more natural persons, including a deposit to the credit of a trustee or other fiduciary if the entire beneficial interest in the deposit is held by one or more natural persons;

(iv) A time deposit that is transferable, issued on or after October 1, 1980, to and held by one or more natural persons, including a deposit to the credit of a trustee or other fiduciary if the entire beneficial interest is held by one or more natural persons. A time deposit is transferable unless it contains a specific statement on the certificate, instrument, passbook, statement or other form representing the account that it is not transferable. A time deposit that contains a specific statement that it is not transferable is not regarded as transferable even if the following transactions can be effected: a pledge as collateral for a loan; a transaction that occurs due to circumstances arising from death, incompetency, marriage, divorce, attachment or otherwise by operation of law or a transfer on the books or records of the institution; and

(v) A time deposit represented by a promissory note, an acknowledgment of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptances (other than the type described in 12 U.S.C. 372) of the depository institution held by, any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States, to any office located outside the United States of a foreign bank, or to institutions whose time deposits are exempt from interest rate limitations under § 217.3(g) of Regulation Q (12 CFR 217.3(g)).

(2) "Nonpersonal time deposit" does not include nontransferable time deposits to the credit of or in which the entire beneficial interest is held by an individual pursuant to an Individual Retirement Account or Keogh (H.R. 10) Plan under 26 U.S.C. (I.R.C. 1954) 408, 401, or nontransferable time deposits held by an employer as part of an unfunded deferred compensation plan established pursuant to subtitle D of the Revenue Act of 1978 (Pub. L. 95-600, 92 Stat. 2763).

(g) "*Natural person*" means an individual or a sole proprietorship. The term does not mean a corporation owned by an individual, a partnership or other association.

(h) "*Eurocurrency liabilities*" means:

(1) For a depository institution or an Edge or Agreement Corporation organized under the laws of the United States, the sum, if positive, of the following:

(i) Net balances due to its non-United States offices and its international banking facilities ("IBFs") from its United States offices;

(ii)(A) For a depository institution organized under the laws of the United States, assets (including participations) acquired from its United States offices and held by its non-United States offices, by its IBF, or by non-United States offices of an affiliated Edge or Agreement Corporation;[1] or

(B) For an Edge or Agreement Corporation, assets (including participations) acquired from its United States offices and held by its non-United States offices, by its IBF, by non-United States offices of its U.S. or foreign parent institution, or by non-United States offices of an affiliated Edge or Agreement Corporation; and

(iii) Credit outstanding from its non-United States offices to United States residents (other than assets acquired and net balances due from its United States offices), except credit extended (A) from its non-United States offices in the aggregate amount of $100,000 or less to any United States resident, (B) by a non-United States office that at no time during the computation period had credit outstanding to United States residents exceeding $1 million, (C) to an international banking facility, or (D) to an institution that will be maintaining reserves on such credit pursuant to this part. Credit extended from non-United States offices or from IBFs to a foreign branch, office, subsidiary, affiliate of other foreign establishment ("foreign affiliate") controlled by one or more domestic corporations is not regarded as credit extended to a

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[1] This subparagraph does not apply to assets (1) that were acquired before October 7, 1979, or (2) that were acquired by an IBF from its establishing entity before the end of the second reserve computation period after its establishment.

United States resident if the proceeds will be used to finance the operations outside the United States of the borrower or of other foreign affiliates of the controlling domestic corporation(s).

(2) For a United States branch or agency of a foreign bank, the sum, if positive, of the following:

(i) Net balances due to its foreign bank (including offices thereof located outside the United States) and its international banking facility after deducting an amount equal to 8 per cent of the following: the United States branch's or agency's total assets less the sum of (A) cash items in process of collection; (B) unposted debits; (C) demand balances due from depository institutions organized under the laws of the United States and from other foreign banks; (D) balances due from foreign central banks; and (E) positive net balances due from its IBF, its foreign bank, and the foreign bank's United States and non-United States offices; and

(ii) Assets (including participations) acquired from the United States branch or agency (other than assets required to be sold by Federal or State supervisory authorities) and held by its foreign bank (including offices thereof located outside the United States), by its parent holding company, by non-United States offices or an IBF of an affiliated Edge or Agreement Corporation, or by its IBFs.[1]

(i)(1) *"Cash item in process of collection"* means:

(i) Checks in the process of collection, drawn on a bank or other depository institution that are payable immediately upon presentation in the United States, including checks forwarded to a Federal Reserve Bank in process of collection and checks on hand that will be presented for payment or forwarded for collection on the following business day;

(ii) Government checks drawn on the Treasury of the United States that are in the process of collection; and

(iii) Such other items in the process of collection, that are payable immediately upon presentation in the United States and that are customarily cleared or collected by depository institutions as cash items, including:

(A) Drafts payable through another depository institution;

(B) Redeemed bonds and coupons;

(C) Food coupons and certificates;

(D) Postal and other money orders, and traveler's checks;

(E) Amounts credited to deposit accounts in connection with automated payment arrangements where such credits are made one business day prior to the scheduled payment date to insure that funds are available on the payment date;

(F) Commodity or bill of lading drafts payable immediately upon presentation in the United States;

(G) Returned items and unposted debits; and

(H) Broker security drafts.

(2) "Cash item in process of collection" does not include items handled as noncash collections and credit card sales slips and drafts.

(j) *"Net transaction accounts"* means the total amount of a depository institution's transaction accounts less the deductions allowed under the provisions of § 204.3.

(k)(1) *"Vault cash"* means United States currency and coin owned and held by a depository institution that may, at any time, be used to satisfy depositors' claims.

(2) "Vault cash" includes United States currency and coin in transit to a Federal Reserve Bank or a correspondent depository institution for which the reporting depository institution has not yet received credit, and United States currency and coin in transit from a Federal Reserve Bank or a correspondent depository institution when the reporting depository institution's account at the Federal Reserve or correspondent bank has been charged for such shipment.

(3) Silver and gold coin and other currency and coin whose numismatic or bullion value is substantially in excess of face value is not vault cash for purposes of this part.

(l) *"Pass through account"* means a balance maintained by a depository institution that is not a member bank, by a U.S. branch or agency of a foreign bank, or by an Edge or Agreement Corporation, (1) in an institution that maintains required reserve balances at a Federal Reserve Bank, (2) in a Federal Home Loan Bank, (3) in the National Credit Union Administration Central Liquidity Facility, or (4) in an institution that has been authorized by the Board to pass through required reserve balances if the institution, Federal Home Loan Bank, or National Credit Union Administration Central Liquidity Facility maintains the funds in the form of a balance in a Federal Reserve Bank of which it is a member or at which it maintains an account in accordance with rules and regulations of the Board.

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[1] See footnote on previous page.

(m)(1) *"Depository institution"* means:

(i) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or any bank that is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(ii) Any savings bank or mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(f), (g));

(iii) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)) or any credit union that is eligible to apply to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(iv) Any member as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(4)); and

(v) Any insured institution as defined in section 401 of the National Housing Act (12 U.S.C. 1724(a)) or any institution which is eligible to apply to become an insured institution under section 403 of such Act (12 U.S.C. 1726).

(2) "Depository institution" does not include international organizations such as the World Bank, the Inter-American Development Bank, and the Asian Development Bank.

(n) *"Member bank"* means a depository institution that is a member of the Federal Reserve System.

(o) *"Foreign bank"* means any bank or other similar institution organized under the laws of any country other than the United States or organized under the laws of Puerto Rico, Guam, American Samoa, the Virgin Islands, or other territory or possession of the United States.

(p) *"De novo depository institution"* means a depository institution that was not engaged in business on July 1, 1979, and is not the successor by merger or consolidation to a depository institution that was engaged in business prior to the date of merger or consolidation.

(q) *"Affiliate"* includes any corporation, association, or other organization:

(1) Of which a depository institution, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the numbers of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions;

(2) Of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of a depository institution who own or control either a majority of the shares of such depository institution or more than 50 percent of the number of shares voted for the election of directors of such depository institution at the preceding election, or by trustees for the benefit of the shareholders of any such depository institution;

(3) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one depository institution; or

(4) Which owns or controls, directly or indirectly, either a majority of the shares of capital stock of a depository institution or more than 50 percent of the number of shares voted for the election of directors, trustees or other persons exercising similar functions of a depository institution at the preceding election, or controls in any manner the election of a majority of the directors, trustees, or other persons exercising similar functions of a depository institution, or for the benefit of whose shareholders or members all or substantially all the capital stock of a depository institution is held by trustees.

(r) *"United States"* means the States of the United States and the District of Columbia.

(s) *"United States resident"* means (1) any individual residing (at the time of the transaction) in the United States; (2) any corporation, partnership, association or other entity organized in the United States ("domestic corporation"); and (3) any branch or office located in the United States of any entity that is not organized in the United States.

(t) "Any deposit that is payable only at an office located outside the United States" means (1) a deposit of a United States resident [2] that is in a denomination of $100,000 or more, and as to which the depositor is entitled, under the agreement with the institution, to demand payment only outside the United States or (2) a deposit of a person who is not a United States resident [2] as to which the depositor is entitled, under the agreement with the institution, to demand payment only outside the United States.

(Secs. 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 461, 371a, 371b, 601 *et seq.*, 611, *et seq.*); sec. 7 of the Int'l Banking Act of 1978 (12 U.S.C. 3105); sec. 327 of the Garn-St. Germain Depository Instns. Act of 1982 (12 U.S.C. 3503) 95 Stat. 1501)

[45 FR 56018, Aug. 22, 1980, as amended at 45 FR 81537, Dec. 11, 1980; 46 FR 22178, Apr. 16, 1981; 46 FR 27092, May 18, 1981; 46 FR 32428, 32429, June 23, 1981; 47 FR 38105, Aug. 30, 1982; 47 FR 44707, Oct. 12, 1982; 47 FR 55208, Dec. 8, 1982; 48 FR 224, Jan. 4, 1983; 48 FR 28973, June 24, 1983; 48 FR 46263, Oct. 12, 1983]

§ 204.3 Computation and maintenance.

(a) *Maintenance of required reserves.* A depository institution, a U.S. branch or agency of a foreigh bank, and an Edge or Agreement Corporation shall maintain reserves against its deposits and Eurocurrency liabilities in accordance with the procedures prescribed in this section and § 204.4 and the ratios prescribed in § 204.9. Penalties shall be assessed for deficiencies in required reserves in accordance with the provisions of § 204.7. Every depository institution, U.S. branch or agency of a foreign bank, and Edge or Agreement Corporation shall file reports of deposits in accordance with the instructions of the Board, based on the level of its deposits and reservable liabilities consistent with the Board's need for data to carry out its responsibility to monitor and control monetary and credit aggregates. For purposes of this part, the obligations of a majority owned (50% or more) U.S. subsidiary (except an Edge or Agreement Corporation) of a depository institution shall be regarded as obligations of the parent depository institution.

(1) *United States branches and agencies of foreign banks.* (i) A foreign bank's United States branches and agencies operating within the same State and within the same Federal Reserve District shall prepare and file a report of deposits on an aggregated basis.

(ii) United States branches and agencies of the same foreign bank shall, if possible, assign the low reserve tranche on transaction accounts (§ 204.9(a)) to only one office or to a group of offices filing a single aggregated report of deposits. If the low reserve tranche cannot be fully utilized by a single office or by a group of offices filing a single report of deposits, the unused portion of the tranche may be assigned to other offices of the same foreign bank until the amount of the tranche is exhausted. The foreign bank shall determine this assignment subject to the restriction that if a portion of the tranche is assigned to an office in a particular State, any unused portion must first be assigned to other offices located within the same State and within the same Federal Reserve District, that is, to other offices included on the same aggregated report of deposits. If necessary in order to avoid under-utilization of the low reserve tranche, the allocation may be changed at the beginning of a calendar month. Under other circumstances, the low reserve tranche may be reallocated at the beginning of a calendar year.

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[2] A deposit of a foreign branch, office, subsidiary, affiliate or other foreign establishment ("foreign affiliate") controlled by one or more domestic corporations is not regarded as a deposit of a United States resident if the funds serve a purpose in connection with its foreign or international business or that of other foreign affiliates of the controlling domestic corporation(s).

(2) *Edge and Agreement Corporations.* (i) An Edge or Agreement Corporation's offices operating within the same State and within the same Federal Reserve District shall prepare and file a report of deposits on an aggregated basis.

(ii) An Edge or Agreement Corporation shall, if possible, assign the low reserve tranche on transaction accounts (§ 204.9(a)) to only one office or to a group of offices filing a single aggregated report of deposits. If the low reserve tranche cannot be fully utilized by a single office or by a group of offices filing a single report of deposits, the unused portion of the tranche may be assigned to other offices of the same institution until the amount of the tranche is exhausted. An Edge or Agreement Corporation shall determine this assignment subject to the restriction that if a portion of the tranche is assigned to an office in a particular State, any unused portion must first be assigned to other offices located within the same State and within the same Federal Reserve District, that is, to other offices included on the same aggregated report of deposits. If necessary in order to avoid under-utilization of the low reserve tranche, the allocation may be changed at the beginning of a calendar month. Under other circumstances, the low reserve tranche may be reallocated at the beginning of a calendar year.

(3) *Allocation of exemption from reserve requirements.* (i) In determining the reserve requirements of a depository institution, the exemption provided for in § 204.9(a) shall apply in the following order of priorities:

(A) First, to nonpersonal time deposits representing deposits or accounts issued pursuant to 12 CFR 1204.122; (B) second, to net transaction accounts that are first authorized by Federal law in any State after April 1, 1980; (C) third, to other net transaction accounts; and (D) fourth, to other nonpersonal time deposits or Eurocurrency liabilities starting with those with the highest reserve ratio under § 204.9(a) and then to succeeding lower reserve ratios.

(ii) A depository institution, United States branches and agencies of the same foreign bank, or an Edge or Agreement corporation shall, if possible, assign the reserve requirement exemption of § 204.9(a) to only one office or to a group of offices filing a single aggregated report of deposits. If the reserve requirement exemption cannot be fully utilized by a single office or by a group of offices filing a single report of deposits, the unused portion of the exemption may be assigned to other offices of the same institution until the amount of the exemption or reservable liabilities is exhausted. A depository institution, foreign bank, or Edge or Agreement corporation shall determine this assignment subject to the restriction that if a portion of the exemption is assigned to an office in a particular state, any unused portion must first be assigned to other offices located within the same state and within the same Federal Reserve District, that is, to other offices included on the same aggregated report of deposits. The exemption may be reallocated at the beginning of a calendar year, or, if necessary to avoid underutilization of the exemption, at the beginning of a calendar month. The amount of the reserve requirement exemption allocated to an office or group of offices may not exceed the amount of the low reserve tranche allocated to such office or offices under this paragraph.

(b) *Form of reserves.* Reserves shall be held in the form of (1) vault cash, (2) a balance maintained directly with the Federal Reserve Bank in the District in which it is located, or (3) a pass through account. Reserves held in the form of a pass through account shall be considered to be a balance maintained with the Federal Reserve.

(c) *Computation of required reserves for institutions that report on a weekly basis.* (1) Required reserves are computed on the basis of daily average balances of deposits and Eurocurrency liabilities during a fourteen-day period ending every second Monday (the "computation period"). Reserve requirements are computed by applying the ratios prescribed in § 204.9 to the classes of deposits and Eurocurrency liabilities of the institution. The reserve balance that is required to be maintained with the Federal Reserve shall be maintained during a fourteen-day period (the "maintenance period") which begins on a Thursday and ends on the second Wednesday thereafter.

(2) A reserve balance shall be maintained during a given maintenance period, based

(i) On the daily average net transaction accounts held by the depository institution during the computation period that began immediately prior to the beginning of the maintenance period; and

(ii) On the daily average nonpersonal time deposits and daily average Eurocurrency liabilities held by the depository institution during the computation period that ended seventeen days prior to the beginning of the maintenance period.

(3) In determining the reserve balance that is required to be maintained with the Federal Reserve, the daily average vault cash held during the computation period that ended seventeen days prior to the beginning of the maintenance period is deducted from the amount of the institution's required reserves.

(d) *Computation of required reserves for institutions that report on a quarterly basis.* For a depository institution that is permitted to report quarterly, required reserves are computed on the basis of the depository institution's daily average deposit balances during a seven-day computation period that begins on the third Tuesday of March, June, September, and December. In determining the reserve balance that such a depository institution is required to maintain with the Federal Reserve, the daily average vault cash held during the computation period is deducted from the amount of the institution's required reserves. The reserve balance that is required to be maintained with the Federal Reserve shall be maintained during a corresponding period that begins on the fourth Thursday following the end of the institution's computation period and ends on the fourth Wednesday after the close of the institution's next computation period.

(e) *Computation of transaction accounts.* Overdrafts in demand deposit or other transaction accounts are not to be treated as negative demand deposits or negative transaction accounts and shall not be netted since overdrafts are properly reflected on an institution's books as assets. However, where a customer maintains multiple transaction accounts with a depository institution, overdrafts in one account pursuant to a *bona fide* cash management arrangement are permitted to be netted against balances in other related transaction accounts for reserve requirement purposes.

(f) *Deductions allowed in computing reserves.* (1) In determining the reserve balance required under this part, the amount of cash items in process of collection and balances subject to immediate withdrawal due from other depository institutions located in the United States (including such amounts due from United States branches and agencies of foreign banks and Edge and Agreement Corporations) may be deducted from the amount of gross transaction accounts. The amount that may be deducted may not exceed the amount of gross transaction accounts. However, if a depository institution maintains any transaction accounts that are first authorized under Federal law after April 1, 1980, it may deduct from these balances cash items in process of collection and balances subject to immediate withdrawal due from other depository institutions located in the United States only to the extent of the proportion that such newly authorized transaction accounts are of the institution's total transaction accounts. The remaining cash items in process of collection and balances subject to immediate withdrawal due from other depository institutions located in the United States shall be deducted from the institution's remaining transaction accounts.

(2) United States branches and agencies of a foreign bank may not deduct balances due from another United States branch or agency of the same foreign bank, and United States offices of an Edge or Agreement Corporation may not deduct balances due from another United States office of the same Edge Corporation.

(3) Balances "due from other depository institutions" do not include bal-

ances due from Federal Reserve Banks, pass through accounts, or balances (payable in dollars or otherwise) due from banking offices located outside the United States. An institution exercising fiduciary powers may not include in "balances due from other depository institutions" amounts of trust funds deposited with other banks and due to it as a trustee or other fiduciary.

(g) *Availability of cash items as reserves.* Cash items forwarded to a Federal Reserve Bank for collection and credit shall not be counted as part of the reserve balance to be carried with the Federal Reserve until the expiration of the time specified in the appropriate time schedule established under Regulation J, "Collection of Checks and Other Items and Transfers of Funds" (12 CFR Part 210). If a depository institution draws against items before that time, the charge will be made to its reserve account if the balance is sufficient to pay it; any resulting impairment of reserve balances will be subject to the penalties provided by law and by this part. However, the Federal Reserve Bank may, at its discretion, refuse to permit the withdrawal or other use of credit given in a reserve account for any time for which the Federal Reserve bank has not received payment in actually and finally collected funds.

(h) *Carryover of excesses or deficiencies.* (1) For a depository institution computing required reserves under paragraph (c) of this section, any excess or deficiency in a required reserve balance for any maintenance period that does not exceed the greater of the percentage set forth in the schedule below of the institution's required reserves (including required clearing balances) or $25,000, shall be carried forward to the next maintenance period.

Reserve maintenance periods occuring between	Percentage applied to determine allowable carryover
Feb. 2, 1984 and Aug. 1, 1984	3
Aug. 2, 1984 and Jan. 30, 1985	2½
Jan. 31, 1985 and forward	2

(2) For a depository institution reporting deposits and maintaining required reserves under paragraph (d) of this section, any excess or deficiency in a required reserve balance for any maintenance period that does not exceed the greater of 2 percent of the institution's required reserves (including required clearing balances) or $25,000, shall be carried forward to the next maintenance period.

(3) Any carryover not offset during the next period may not be carried forward to additional periods.

(i) *Pass-through rules*—(1) *Procedure.* (i) A nonmember depository institution required to maintain reserve balances ("respondent") may select only one institution to pass through its required reserves. Eligible institutions through which respondent required reserve balances may be passed ("correspondents") are Federal Home Loan Banks, the National Credit Union Administration Central Liquidity Facility, and depository institutions that maintain required reserve balances at a Federal Reserve office. In addition, the Board reserves the right to permit other institutions, on a case-by-case basis, to serve as pass-through correspondents. The correspondent chosen must subsequently pass through the required reserve balances of its respondents directly to the appropriate Federal Reserve office. The correspondent placing funds with the Federal Reserve on behalf of respondents will be responsible for reserve account maintenance as described in paragraphs (i) (3) and (4) of this section.

(ii) Respondent depository institutions or pass-through correspondents may institute, terminate, or change pass-through arrangements for the maintenance of required reserve balances by providing all documentation required for the establishment of the new arrangement and/or termination of the existing arrangement to the Federal Reserve Bank in whose territory the respondent is located. The time period required for such a change to be effected shall be specified by each Reserve Bank in its operating circular.

(iii) U.S. branches and agencies of foreign banks and Edge and Agreement Corporations may (*a*) act as pass-through correspondents for any nonmember institution required to maintain reserves or (*b*) pass their own required reserve balances through correspondents. In accordance with the provision set forth in paragraph (i)(3) of this section, the U.S. branches and agencies of a foreign bank or offices of an Edge and Agreement Corporation filing a single aggregated report of deposits may designate any one of the other U.S. offices of the same institution to serve as a pass-through correspondent for all of the offices filing such a single aggregated report of deposits.

(2) *Reports.* (i) Every depository institution that maintains transaction accounts or nonpersonal time deposits is required to file its report of deposits (or any other required form or statement) directly with the Federal Reserve Bank of its District, regardless of the manner in which it chooses to maintain required reserve balances.

(ii) The Federal Reserve Bank receiving such reports shall notify the reporting depository institution of its reserve requirements. Where a pass-through arrangement exists, the Reserve Bank will also notify the correspondent passing respondent reserve balances through to the Federal Reserve of its respondent's required reserve balances.

(iii) The Federal Reserve will not hold a correspondent responsible for guaranteeing the accuracy of the reports of deposits submitted by its respondents to their local Federal Reserve Banks.

(3) *Account maintenance.* (i) A correspondent that passes through required reserve balances of respondents whose main offices are located in the same Federal Reserve territory in which the main office of the correspondent is located shall have the option of maintaining such required reserve balances in one of two ways:

(*a*) A correspondent may maintain such balances, along with the correspondent's own required reserve balances, in a single commingled account at the Federal Reserve Bank office in whose territory the correspondent's main office is located, or

(*b*) A correspondent may maintain its own required reserve balance in an account with the Federal Reserve Bank office in whose territory its main office is located. The correspondent, in addition, would maintain in a separate commingled account the required reserve balances passed through for respondents whose main offices are located in the same Federal Reserve territory as that of the main office of the correspondent.

(ii) A correspondent that passes through required reserve balances of respondents whose main offices are located outside the Federal Reserve territory in which the main office of the correspondent is located shall maintain such required reserve balances in a separate commingled account at each Federal Reserve office in whose territory the main offices of such respondents are located.

(iii) A Reserve Bank may, at its discretion, require a pass-through correspondent to consolidate in a single account the reserve balances of all of its respondents whose main offices are located in any territory of that Federal Reserve District.

(4) *Responsibilities of Parties.* (i) Each individual depository institution is responsible for maintaining its required reserve balance with the Federal Reserve Bank either directly or through a pass-through correspondent.

(ii) A pass-through correspondent shall be responsible for assuring the maintenance of the appropriate aggregate level of its respondents' required reserve balances. A Reserve Bank will compare the total reserve balance required to be maintained in each reserve account with the total actual reserve balance held in such reserve account for purposes of determining required reserve deficiencies, imposing or waiving penalties for deficiencies in required reserves, and for other reserve maintenance purposes. A penalty for a deficiency in the aggregate level of the required reserve balance will be imposed by the Reserve Bank on the correspondent maintaining the account.

(iii) Each correspondent is required to maintain detailed records for each of its respondents in a manner that permits Reserve Banks to determine whether the respondent has provided a sufficient required reserve balance to the correspondent. A correspondent passing through a respondent's reserve balance shall maintain records and make such reports as the Federal Reserve System requires in order to insure the correspondent's compliance with its responsibilities for the maintenance of a respondent's reserve balance. Such records shall be available to the Federal Reserve Banks as required.

(iv) The Federal Reserve Bank may terminate any pass-through relationship in which the correspondent is deficient in its recordkeeping or other responsibilities.

(v) Interest paid on supplemental reserves (if such reserves are required under § 204.6 of this part) held by respondent(s) will be credited to the commingled reserve account(s) maintained by the correspondent.

(5) *Services.* (i) A depository institution maintaining its reserve balances on a pass-through basis may obtain available Federal Reserve System services directly from its local Federal Reserve office. For this purpose, the pass-through account in which a respondent's required reserve balance is maintained may be used by the respondent for the posting of entries arising from transactions involving the use of such Federal Reserve services, if the posting of these types of transactions has been authorized by the correspondent and the Federal Reserve. For example, access to the wire transfer, securities transfer, and settlement services that involve charges to the commingled reserve account at the Reserve Bank will require authorization from the correspondent and the Reserve Bank for the type of transaction that is occurring.

(ii) In addition, in obtaining Federal Reserve services, respondents maintaining their required reserves on a pass-through basis may choose to have entries arising from the use of Federal Reserve services posted to:

(*a*) With the prior authorization of all parties concerned, the reserve account maintained by any institution at a Federal Reserve Bank, or (*b*) an account maintained for clearing purposes at a Federal Reserve Bank by the respondent.

(iii) Accounts at Federal Reserve Banks consisting only of respondents' reserve balances that are passed through by a correspondent to a Federal Reserve Bank may be used only for transactions of respondents. A correspondent will not be permitted to use such pass-through accounts for purposes other than serving its respondents' needs.

(iv) A correspondent may not apply for Federal Reserve credit on behalf of a respondent. Rather, a respondent should apply directly to its Federal Reserve Bank for credit. Any Federal Reserve credit obtained by a respondent may be credited, at the respondent's option and with the approval of the parties concerned, to the reserve account in which its required reserves are maintained by a correespondent, to a clearing account maintained by the respondent, or to any account to which the respondent is authorized to post entries arising from the use of Federal Reserve services.

(Secs. 11(a), 11(c), 19, 25, 25(a), Federal Reserve Act (12 U.S.C. 248(a), 248(c), 461, 601 *et seq.*, 611 *et seq.*; sec. 7, Int'l Banking Act of 1978 (12 U.S.C. 3105); sec. 411, Garn-St. Germain Depository Institutions Act of 1982 (Pub. L. 97-320; 96 Stat. 1520; sec. 13, Senate Joint Resolution 271, 97th Cong., 2d Sess.)

[45 FR 56018, Aug. 22, 1980, as amended at 45 FR 58100, Sept. 2, 1980; 45 FR 81537, Dec. 11, 1980; 46 FR 32430, June 23, 1981; 47 FR 44707, Oct. 12, 1982; 47 FR 55206, Dec. 8, 1982; 48 FR 2314, Jan. 19, 1983; 48 FR 17335, 17336, Apr. 22, 1983]

§ 204.4 Transitional adjustments.

The following transitional adjustments for computing Federal reserve requirements shall apply to all member and nonmember depository institutions, except for reserves imposed under §§ 204.5 and 204.6.

(a) *Nonmembers.* Except as provided below, the required reserves of a depository institution that was engaged in business on July 1, 1979, but was not a member of the Federal Reserve System on or after that date shall be determined by reducing the amount of required reserves computed under § 204.3 in accordance with the following schedule:

Reserve maintenance periods occuring	Percentage that computed reserves will be reduced
Nov. 13, 1980 to Sept. 2, 1981	87.5
Sept. 3, 1981 to Sept. 1, 1982	75
Sept. 2, 1982 to Aug. 31, 1983	62.5
Sept. 1, 1983 to Sept. 12, 1984	50
Sept. 13, 1984 to Sept. 11,1985	37.5
Sept. 12, 1985 to Sept. 10, 1986	25
Sept. 11, 1986 to Sept. 9, 1987	12.5
Sept. 10, 1987 and forward	0

However, an institution shall not reduce the amount of required reserves on any category of deposits or accounts that are first authorized under Federal law in any state after April 1, 1980, or on deposits or accounts issued pursuant to 12 CFR 1204.122.

(b) *Members and former members.* The required reserves of any depository institution that is a member bank on September 1, 1980, or withdraws from membership after March 31, 1980, shall be determined as follows:

(1) A depository institution whose required reserves are higher using the reserve ratios in effect during a given computation period (§ 204.9(a)) than its required reserves using the reserve ratios in effect on August 31, 1980 (§ 204.9(b)) (without regard to required reserves on deposits or accounts issued pursuant to 12 CFR 1204.122):

(i) Shall maintain the full amount of required reserves on deposits or accounts issued pursuant to 12 CFR 1204.122; and

(ii) Shall reduce the amount of its required reserves on all other deposits computed under § 204.3 by an amount determined by multiplying the amount by which required reserves computed under § 204.3 exceed the amount of required reserves computed using the reserve ratios that were in effect on August 31, 1980 (§ 204.9(b)), times the appropriate percentage specified below in accordance with the following schedule:

Reserve maintenance periods occurring between	Percentage applied to difference to compute amount to be subtracted
Nov. 13, 1980 to Sept. 2, 1981	75
Sept. 3, 1981 to Sept. 1, 1982	50
Sept. 2, 1982 to Aug. 31, 1983	25
Sept. 1, 1983 forward	0

(2) A depository institution whose required reserves are lower using the reserve ratios in effect during a given computation period (§ 204.9(a)) than its required reserves computed using the reserve ratios in effect on August 31, 1980 (§ 204.9(b)) (without regard to required reserves on deposits or accounts issued pursuant to 12 CFR 1204.122):

(i) Shall maintain the full amount of required reserves on deposits or accounts issued pursuant to 12 CFR 1204.122; and

(ii) Shall increase the amount of its required reserves on all other deposits computed under § 204.3 by an amount determined by multiplying the amount by which required reserves computed using the reserve ratios that were in effect on August 31, 1980 (§ 204.9(b)), exceed the amount of required reserves computed under § 204.3, times the appropriate percentage specified below in accordance with the following schedule:

Reserve maintenance periods occurring between	Percentage[1]
Nov. 13, 1980 and Sept. 2, 1981	75
Sept. 3, 1981 and Mar. 3, 1982	62.5
Mar. 4, 1982 and Sept. 1, 1982	50
Sept. 2, 1982 and Mar. 2, 1983	37.5
Mar. 3, 1983 and Aug. 31, 1983	25
Sept. 1, 1983 and Feb. 1, 1984	12.5
Feb. 2, 1984 and forward	0

[1] Applied to difference to compute amount to be added.

(c) *Certain former member banks.* The required reserves of any depository institution that was a member bank on July 1, 1979, and withdrew from membership during the period beginning on July 1, 1979, and ending on March 31, 1980, shall be determined by reducing the amount of required reserves computed under § 204.3 in accordance with the following schedule:

Reserve maintenance periods occurring between	Percentage that computed reserves will be reduced
October 28, 1982 and October 26, 1983	50
October 27, 1983 and October 24, 1984	33.3
October 25, 1984 and October 23, 1985	16.7
October 24, 1985 and forward	0

However, an institution shall not reduce the amount of required reserves on any category of deposits or accounts that are first authorized under Federal law in any state after April 1, 1980, or on deposits or accounts issued pursuant to 12 CFR 1204.122.

(d) *New members.* The required reserves of nonmember depository institution that was engaged in business but was not a member bank during the period between July 1, 1979 and September 1, 1980, inclusive, and which becomes a member of the Federal Reserve System after September 1, 1980, shall be determined under paragraph (a) or (c), as applicable, as if it had remained a nonmember and adding to this amount an amount determined by multiplying the difference between its required reserves computed using the ratios specified in § 204.9(a) and its required reserves computed as if it had remained a nonmember times the percentage specified below in accordance with the following schedule:

Maintenance periods occurring during successive quarters after becoming a member bank	Percentage applied to difference to compute amount to be added
1	12.5
2	25.0
3	37.5
4	50.0
5	62.5
6	75.0
7	87.5
8 and succeeding	100.0

(e) *De novo institutions.* (1) The required reserves of any depository institution that was not engaged in business on September 1, 1980, shall be computed under § 204.3 in accordance with the following schedule:

Maintenance periods [1]	Percentage [2]
1	40
2	45
3	50
4	55
5	65
6	75
7	85
8 and succeeding	100

[1] Maintenance periods occurring during successive quarters after entering into business.

[2] Percentage of reserve requirement to be maintained.

This subparagraph also shall apply to a United States branch or agency of a foreign bank if such branch or agency is the foreign bank's first office in the United States. Additional branches or agencies of such a foreign bank shall be entitled only to the remaining phase-in available to the initial office.

(2) Notwithstanding paragraph (e)(1) of this section, the required reserves of any depository institution that:

(i) Was not engaged in business on November 18, 1981; and

(ii) Has $50 million or more in daily average total transaction accounts, nonpersonal time deposits and Eurocurrency liabilities for any computation period after commencing business; shall be 100 percent of the required reserves computed under § 204.3 starting with the maintenance period that begins eight days after the computation period during which such institution has daily average total transaction accounts, nonpersonal time deposits and Eurocurrency liabilities of $50 million or more.

(f) *Nonmember depository institutions with offices in Hawaii.* Any depository institution that, on August 1, 1978, (1) was engaged in business as a depository institution in Hawaii, and (2) was not a member of the Federal Reserve System at any time on or after such date shall not maintain reserves imposed under this part against deposits, including deposits or accounts issued pursuant to 12 CFR 1204.122, held or maintained at its offices located in Hawaii until January 2, 1986. Beginning January 2, 1986, the required reserves on deposits held or maintained at offices located in Hawaii of such a depository institution shall be determined by reducing the amount of required reserves under § 204.3 in accordance with the following schedule:

Maintenance periods occurring between	Percentage that computed reserves will be reduced
Jan. 2 to Dec. 31, 1986	87.5
Jan. 1, 1987 to Jan. 6, 1988	75
Jan. 7, 1988 to Jan. 4, 1989	62.5
Jan. 5, 1989 to Jan. 3, 1990	50
Jan. 4, 1990 to Jan. 2, 1991	37.5
Jan. 3, 1991 to Jan. 1, 1992	25
Jan. 2, 1992 to Jan. 6, 1993	12.5
Jan. 7, 1993 forward	0

(g) *Mergers and consolidations.* The following rules concerning transitional adjustments apply to mergers and consolidations of depository institutions.

(1) Where all depository institutions involved in a merger or consolidation are subject to the same paragraph of the transitional adjustment rules contained in paragraphs (a) through (f) of this section during the reserve computation period immediately preceding the merger, the surviving institution shall continue to compute its transitional adjustment of required reserves under such applicable paragraph, except that the amount of reserves which shall be maintained shall be reduced by an amount determined by multiplying the amount by which the required reserves during the computation period immediately preceding the date of the merger (computed as if the depository institutions had merged) exceeds the sum of the actual required reserves of each depository institution during the same computation period, times the appropriate percentage as specified in the following schedule:

Maintenance [1]	Percentage [2]
1	87.5
2	75.0
3	62.0
4	50.0
5	37.5
6	25.0
7	12.5
8 and succeeding	0

[1] Periods occuring during quarterly periods following merger.

[2] Applied to difference to compute amount to be subtracted.

(2)(i) Where the depository institutions involved in a merger or consolidation are not subject to the same paragraph of the transitional adjustment rules contained in paragraphs (a) through (f) of this section and such merger or consolidation occurs:

(A) On or after July 1, 1979, between a nonmember bank and a bank that was a member bank on or after July 1, 1979, and the survivor is a nonmember bank;

(B) On or after March 31, 1980, between a member bank and a nonmember bank and the survivor is a member bank; or

(C) On or after September 1, 1980, between any other depository institutions.

The required reserves of the surviving institution shall be computed by allocating its deposits, Eurocurrency liabilities, other reservable claims, balances due from other depository institutions and cash items in process of collection to each depository institution involved in the merger transaction and applying to such amounts the transitional adjustment rule of paragraphs (a) through (f) of this section to which each such depository institution was subject during the reserve computation period immediately prior to the merger or consolidation.

(ii) The deposits of the surviving institution shall be allocated according to the ratio that daily average total required reserves of each depository institution involved in the merger were to the sum of daily average total required reserves of all institutions involved in the merger or consolidation during the reserve computation period immediately preceding the date of the merger.

(A) If the merger occurs before November 6, 1980, such ratio of daily average total required reserves shall be computed using the reserve requirement ratios in § 204.9(b).

(B) If the merger occurs on or after November 6, 1980, such ratio of daily average total required reserves shall be computed using the reserve requirement ratios in § 204.9(a) without regard to the transitional adjustments of this section.

(iii) The low reserve tranche on transaction accounts (§ 204.9(a)) shall be allocated to each institution involved in the merger or consolidation using the ratio computed in paragraph (g)(2)(ii) and the reserve requirement tranches on demand deposits (§ 204.9(b)) shall be allocated to member bank deposits using such ratio of daily average total required reserves.

(iv) The vault cash of the surviving depository institution also will be allocated to each institution involved in the merger or consolidation according to the ratio that daily average total required reserves of each depository institution involved in the merger was to the sum of daily average total required reserves of all institutions involved in the merger or consolidation during the reserve computation period immediately preceding the date of the merger.

(v) The amount of reserves which shall be maintained shall be reduced by an amount determined by multiplying the amount by which the required reserves during the computation period immediately preceding the date of the merger (computed as if the depository institutions had merged) exceeds the sum of the actual required reserves of each depository institution during the same computation period, times the appropriate percentage as specified in the following schedule:

Maintenance[1]	Percentage[2]
1	87.5
2	75.0
3	62.0
4	50.0
5	37.5
6	25.0
7	12.5
8 and succeeding	0

[1] Periods occurring during quarterly periods following merger.

[2] Applied to difference to compute amount to be subtracted.

(Secs. 11(a), 11(c), 19, 25, 25(a), Federal Reserve Act (12 U.S.C. 248(a), 248(c), 461, 601 *et seq.*, 611 *et seq.*); sec. 7, Int'l Banking Act of 1978 (12 U.S.C. 3105; sec. 327, Garn-St. Germain Depository Instns. Act of 1982 (12 U.S.C. 3503) 96 Stat. 1501; S.J. Res. 271, 97th Cong., 2d Sess. section 13 (1982))

[45 FR 56018, Aug. 22, 1980, as amended at 45 FR 73015, Nov. 4, 1980; 45 FR 81537, Dec. 11, 1980; 46 FR 32430, June 23, 1981; 46 FR 57668, Nov. 25, 1981; 47 FR 14482, Apr. 5, 1982; 47 FR 44708, Oct. 12, 1982; 47 FR 49827, Nov. 3, 1982; 47 FR 52207, Dec. 8, 1982; 48 FR 2314, Jan. 19, 1983; 50 FR 51509, Dec. 17, 1985]

§ 204.5 Emergency reserve requirement.

(a) *Finding by Board.* The Board may impose, after consulting with the appropriate committees of Congress, additional reserve requirements on depository institutions at any ratio on any liability upon a finding by at least five members of the Board that extraordinary circumstances require such action.

(b) *Term.* Any action taken under this section shall be valid for a period not exceeding 180 days, and may be extended for further periods of up to 180 days each by affirmative action of at least five members of the Board for each extension.

(c) *Reports to Congress.* The Board shall transmit promptly to Congress a report of any exercise of its authority under this paragraph and the reasons for the exercise of authority.

(d) *Reserve requirements.* At present, there are no emergency reserve requirements imposed under this section.

[45 FR 56018, Aug. 22, 1980]

§ 204.6 Supplemental reserve requirement.

(a) *Finding by Board.* Upon the affirmative vote of at least five members of the Board and after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board, the Board may impose a supplemental reserve requirement on every depository institution of not more than 4 percent of its total transaction accounts. A supplemental reserve requirement may be imposed if:

(1) The sole purpose of the requirement is to increase the amount of reserves maintained to a level essential for the conduct of monetary policy;

(2) The requirement is not imposed for the purpose of reducing the cost burdens resulting from the imposition of basic reserve requirements;

(3) Such requirement is not imposed for the purpose of increasing the

amount of balances needed for clearing purposes; and

(4) On the date on which supplemental reserve requirements are imposed, the total amount of basic reserve requirements is not less than the amount of reserves that would be required on transaction accounts and nonpersonal time deposits under the initial reserve ratios established by the Monetary Control Act of 1980 (Pub. L. 96-221) in effect on September 1, 1980.

(b) *Term.* (1) If a supplemental reserve requirement has been imposed for a period of one year or more, the Board shall review and determine the need for continued maintenance of supplemental reserves and shall transmit annual reports to the Congress regarding the need for continuing such requirement.

(2) Any supplemental reserve requirement shall terminate at the close of the first 90-day period after the requirement is imposed during which the average amount of supplemental reserves required are less than the amount of reserves which would be required if the ratios in effect on September 1, 1980, were applied.

(c) *Earnings Participation Account.* A depository institutions's supplemental reserve requirement shall be maintained by the Federal Reserve Banks in an Earnings Participation Account. Such balances shall receive earnings to be paid by the Federal Reserve Banks during each calendar quarter at a rate not to exceed the rate earned on the securities portfolio of the Federal Reserve System during the previous calendar quarter. Additional rules and regulations maybe prescribed by the Board concerning the payment of earnings on Earnings Participation Accounts by Federal Reserve Banks.

(d) *Report to Congress.* The Board shall transmit promptly to the Congress a report stating the basis for exercising its authority to require a supplemental reserve under this section.

(e) *Reserve requirements.* At present, there are no supplemental reserve requirements imposed under this section.

[45 FR 56018, Aug. 22, 1980, as amended at 45 FR 81537, Dec. 11, 1980]

§ 204.7 Penalties.

(a) *Penalties for Deficiencies*—(1) *Assessment of Penalties.* Deficiencies in a depository institution's required reserve balance, after application of the 2 per cent carryover provided in § 204.3(f) are subject to penalties. Federal Reserve Banks are authorized to assess penalties for deficiencies in required reserves at a rate of 2 per cent per year above the lowest rate in effect for borrowings from the Federal Reserve Bank on the first day of the calendar month in which the deficiencies occurred. Penalties shall be assessed on the basis of daily average deficiencies during each maintenance period. Reserve Banks may, as an alternative to levying monetary penalties, after consideration of the circumstances involved, permit a depository institution to eliminate deficiencies in its required reserve balance by maintaining additional reserves during subsequent reserve maintenance periods.

(2) *Waivers.* (i) Reserve Banks may waive the penalty for reserve deficiencies except when the deficiency arises out of a depository institution's gross negligence or conduct that is inconsistent with the principles and purposes of reserve requirements. Each Reserve Bank has adopted guidelines that provide for waivers of small penalties. The guidelines also provide for waiving the penalty once during a two-year period for any deficiency that does not exceed a certain percentage of the depository institution's required reserves. Decisions by Reserve Banks to waive penalties in other situations are based on an evaluation of the circumstances in each individual case and the depository institution's reserve maintenance record. If a depository institution has demonstration a lack of due regard for the proper maintenance of required reserves, the Reserve Bank may decline to exercise the waiver privilege and assess all penalties regardless of amount or reason for the deficiency.

(ii) In individual cases, where a Federal supervisory authority waives a liquidity requirement, or waives the penalty for failing to satisfy a liquidity requirement, the Reserve Bank in the District where the involved depository institution is located shall waive the reserve requirement imposed under this part for such depository institution when requested by the Federal supervisory authority involved.

(b) *Penalties for Violations.* Violations of this part may be subject to assessment of civil money penalties by the Board under authority of section 19(1) of the Federal Reserve Act (12 U.S.C 505) as implemented in 12 CFR Part 263. In addition, the Board and any other Federal financial institution supervisory authority may enforce this part with respect to depository institutions subject to their jurisdiction under authority conferred by law to undertake cease and desist proceedings.

[44 FR 56018, Aug. 22, 1980, as amended at 47 FR 44706, Oct. 12, 1982]

§ 204.8 International banking facilities.

(a) *Definitions.* For purposes of this part, the following definitions apply:

(1) *"International banking facility"* or *"IBF"* means a set of asset and liability accounts segregated on the books and records of a depository institution, United States branch or agency of a foreign bank, or an Edge or Agreement Corporation that includes only international banking facility time deposits and international banking facility extensions of credit.

(2) *"International banking facility time deposit"* or *"IBF time deposit"* means a deposit, placement, borrowing or similar obligation represented by a promissory note, acknowledgment of advance, or similar instrument that is not issued in negotiable or bearer form, and

(i) (A) That must remain on deposit at the IBF at least overnight; and

(B) That is issued to

(*1*) Any office located outside the United States of another depository institution organized under the laws of the United States or of an Edge or Agreement Corporation;

(*2*) Any office located outside the United States of a foreign bank;

(*3*) A United States office or a non-United States office of the entity establishing the IBF;

(*4*) Another IBF; or

(*5*) An institution whose time deposits are exempt from interest rate limitations under § 217.3(g) of Regulation Q (12 CFR 217.3(g)); or

(ii) (A) That is payable

(*1*) On a specified date not less than two business days after the date of deposit;

(*2*) Upon expiration of a specified period of time not less than two business days after the date of deposit; or

(*3*) Upon written notice that actually is required to be given by the depositor not less than two business days prior to the date of withdrawal;

(B) That represents funds deposited to the credit of a non-United States resident or a foreign branch, office, subsidiary, affiliate, or other foreign establishment ("foreign affiliate") controlled by one or more domestic corporations provided that such funds are used only to support the operations outside the United States of the depositor or of its affiliates located outside the United States; and

(C) That is maintained under an agreement or arrangement under which no deposit or withdrawal of less than $100,000 is permitted, except that a withdrawal of less than $100,000 is permitted if such withdrawal closes an account.

(3) *"International banking facility extension of credit* or *"IBF loan"* means any transaction where an IBF supplies funds by making a loan, or placing funds in a deposit account. Such transactions may be represented by a promissory note, security, acknowledgment of advance, due bill, repurchase agreement, or any other form of credit transaction. Such credit may be extended only to:

(i) Any office located outside the United States of another depository institution organized under the laws of the United States or of an Edge or Agreement Corporation;

(ii) Any office located outside the United States of a foreign bank;

(iii) A United States or a non-United States office of the institution establishing the IBF;

(iv) Another IBF;

(v) An institution whose time deposits are exempt from interest rate limitations under § 217.3(g) of Regulation Q (12 CFR 217.3(g)); or

(vi) A non-United States resident or a foreign branch, office, subsidiary, affiliate or other foreign establishment ("foreign affiliate") controlled by one or more domestic corporations provided that the funds are used only to finance the operations outside the United States of the borrower or of its affiliates located outside the United States.

(b) *Acknowledgment of use of IBF deposits and extensions of credit.* An IBF shall provide written notice to each of its customers (other than those specified in § 204.8(a)(2)(i)(B) and § 204.8(a)(3) (i) through (v)) at the time a deposit relationship or a credit relationship is first established that it is the policy of the Board of Governors of the Federal Reserve System that deposits received by international banking facilities may be used only to support the depositor's operations outside the United States as specified in § 204.8(a)(2)(ii)(B) and that extensions of credit by IBFs may be used only to finance operations outside of the United States as specified in § 204.8(a)(3)(vi). In the case of loans to or deposits from foreign affiliates of U.S. residents, receipt of such notice must be acknowledged in writing whenever a deposit or credit relationship is first established with the IBF.

(c) *Exemption from reserve requirements.* An institution that is subject to the reserve requirements of this part is not required to maintain reserves against its IBF time deposits or IBF loans. Deposit-taking activities of IBFs are limited to accepting only IBF time deposits and lending activities of IBFs are restricted to making only IBF loans.

(d) *Establishment of an international banking facility.* A depository institution, an Edge or Agreement Corporation or a United States branch or agency of a foreign bank may establish an IBF in any location where it is legally authorized to engage in IBF business. However, only one IBF may be established for each reporting entity that is required to submit a Report of Transaction Accounts, Other Deposits and Vault Cash (Form FR 2900).

(e) *Notification to Federal Reserve.* At least fourteen days prior to the first reserve computation period that an institution intends to establish an IBF it shall notify the Federal Reserve Bank of the district in which it is located of its intent. Such notification shall include a statement of intention by the institution that it will comply with the rules of this part concerning IBFs, including restrictions on sources and uses of funds, and recordkeeping and accounting requirements. Failure to comply with the requirements of this part shall subject the institution to reserve requirements under this part and to interest payment limitations that may be applicable under Regulation Q (12 CFR Part 217) on its IBF time deposits, or result in the revocation of the institution's ability to operate an IBF.

(f) *Recordkeeping requirements.* A depository institution shall segregate on its books and records the asset and liability accounts of its IBF and submit reports concerning the operations of its IBF as required by the Board.

[46 FR 32429, June 23, 1981]

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement Corporations, and United States branches and agencies of foreign banks:

Category: Net transaction accounts	Reserve requirement
$0 to $31.7 million	3 percent of amount.
Over $31.7 million	$951,000 plus 12 percent of amount over $31.7 million.

Nonpersonal time deposits

By original maturity (or notice period):	
Less than 1½ years (percent)	3
1½ years or more (percent)	0
Eurocurrency liabilities (percent)	3

(2) *Exemption from reserve requirements.* Each depository institution, Edge or Agreement Corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts suject to the low reserve tranche in paragraph (a)(1), nonpersonal time deposits, or Eurocur-

rency liabilities or any combination thereof not in excess of $2.6 million determined in accordance with § 204.3(a)(3) of this part.

(b) *Reserve ratios in effect during last computation period prior to September 1, 1980.*

Category	Reserve requirement
Net Demand Deposits:	
Deposit Tranche:	
$0 to $2 million	7 percent.
Over $2 million to $10 million.	$140,000+9½ percent of amount over $2 million.
Over $10 million to $100 million.	$900,000+11¾ percent of amount over $10 million.
Over $100 million to $400 million.	$11,475,000+12¾ percent of amount over $100 million.
Over $400 million	$49,725,000+16¼ percent of amount over $400 million.
Savings deposits	3 percent.
Time deposits (subject to 3 percent minimum specified by law):	
By initial maturity:	
Less than 180 days:	
$0 to $5 million	3 percent.
Over $5 million	6 percent.
180 days to 4 years	2½ percent.
4 years or more	1 percent.
Accounts authorized pursuant to section 303 of Pub. L. 96–221 offered by member banks located in States outside Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont.	12 percent.
Club accounts	3 percent.

For purposes of computing the reserves under this part, that would have been required using the reserve ratios that were in effect on August 31, 1980, the reserve ratio on time deposits of a member bank shall be the average time deposit ratio of the member bank during the 14-day period ending August 6, 1980, except that the reserve ratio on time deposits of a nonmember bank that was a member bank on or after July 1, 1979, but which became a nonmember bank before March 31, 1980, may be the average time deposit ratio of the nonmember during the 14-day period ending August 27, 1980.

(Sec. 41, Garn-St. Germain Depository Act of 1982, Pub. L. 97-320, 96 Stat. 1520; sec. 19, Federal Reserve Act (12 U.S.C. 461 *et. seq.*))

[45 FR 56018, Aug. 22, 1980. Redesignated at 46 FR 32429, June 23, 1981 and amended at 50 FR 50285, Dec. 10, 1985]

§ 204.121 Bankers' banks.

(a) (1) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96-221), imposes Federal reserve requirements on depository institutions that maintain transaction accounts or nonpersonal time deposits. Under section 19(b)(9), however, a depository institution is not required to maintain reserves if it:

(i) Is organized solely to do business with other financial institutions;

(ii) Is owned primarily by the financial institutions with which it does business; and

(iii) Does not do business with the general public.

Depository institutions that satisfy all of these requirements are regarded as "bankers' banks."

(2) In its application of these requirements to specific institutions, the Board will use the following standards:

(i) A depository institution may be regarded as organized solely to do business with other depository institutions even if, as an incidental part to its activities, it does business to a limited extent with entities other than depository institutions. The extent to which the institution may do business with other entities and continue to be regarded as a bankers' bank is specified in paragraph (a)(2)(iii) of this section.

(ii) A depository institution will be regarded as being owned primarily by the institutions with which it does business if 75 per cent or more of its capital is owned by other depository institutions. The 75 per cent or more ownership rule applies regardless of the type of depository institution.

(iii) A depository institution will not be regarded as doing business with the general public if it meets two conditions. First, the range of customers with which the institution does business must be limited to depository institutions, including subsidiaries or organizations owned by depository institutions; directors, officers or employees of the same or other depository institutions; individuals whose accounts are acquired at the request of the institution's supervisory authority due to the actual or impending failure of another depository institution; share insurance funds; and depository institution trade associations. Second, the extent to which the depository institution makes loans to, or investments in, the above entities (other than depository institutions) cannot exceed 10 per cent of total assets, and the extent to which it receives deposits (or shares if the institution does not receive deposits) from or issues other liabilities to the above entities (other than depository institutions) cannot exceed 10 per cent of total liabilities (or net worth if the institution does not receive deposits).

If a depository institution is unable to meet all of these requirements on a continuing basis, it will not be regarded as a bankers' bank and will be required to satisfy Federal reserve requirements on all of its transaction accounts and nonpersonal time deposits.

(b) (1) Section 19(c)(1) of the Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96-221) provides that Federal reserve requirements may be satisfied by the maintenance of vault cash or balances in a Federal Reserve Bank. Depository institutions that are not members of the Federal Reserve System may also satisfy reserve requirements by maintaining a balance in another depository institution that maintains required reserve balances at a Federal Reserve Bank, in a Federal Home Loan Bank, or in the National Credit Union Administration Central Liquidity Facility if the balances maintained by such institutions are subsequently passed through to the Federal Reserve Bank.

(2) On August 27, 1980, the Board announced the procedures that will apply to such pass-through arrangements (45 FR 58099). Section 204.3(i)(1) provides that the Board may permit, on a case-by-case basis, depository institutions that are not themselves required to maintain reserves ("bankers' banks") to act as pass-through correspondents if certain criteria are satisfied. The Board has determined that a bankers' bank may act as a pass-through correspondent if it enters into an agreement with the Federal Reserve to accept responsibility for the maintenance of pass-through reserve accounts in accordance with Regulation D (12 CFR 204.3(i)) and if the Federal Reserve is satisfied that the quality of management and financial resources of the institution are adequate in order to enable the institution to serve as a pass-through correspondent in accordance with Regulation D. Satisfaction of these criteria will assure that pass-through arrangements are maintained properly without additional financial risk to the Federal Reserve.

(3) In order to determine uniformly the adequacy of managerial and financial resources, the Board will consult with the Federal supervisor for the type of institution under consideration. Because the Board does not possess direct experience with supervising depository institutions other than commerical banks, and does not intend to involve itself in the direct supervision of such institutions, it will request the National Credit Union Administration to review requests from credit unions that qualify as bankers' banks and the Federal Home Loan Bank Board to review requests from savings and loan associations that qualify as bankers' banks, regardless of charter or insurance status. (The Board, itself, will consider requests from all commercial banks that qualify as bankers' banks.) If the Federal supervisor does not find the institution's managerial or financial resources to be adequate, the Board will not permit the institution to act as a pass-through correspondent. In order to assure the continued adequacy of managerial and financial resources, it is anticipated that the appropriate Federal supervisor will, on a periodic basis, review and evaluate the managerial and financial resources of the institution in order to determine whether it should continue to be permitted to act as a pass-through correspondent. It is anticipated that, with respect to state chartered institutions, the Federal supervisor may discuss the request with the institute State supervisor. The Board believes that this procedure will promote uniformity of treatment for all types of bankers' banks, and provide consistent advice concerning manage-

rial ability and financial strength from supervisory authorities that are in a better position to evaluate these criteria for depository institutions that are not commerical banks.

(4) Requests for a determination as to whether a depository institution will be regarded as a bankers' bank for purposes of the Federal Reserve Act or for permission to act as a pass-through correspondent may be addressed to the Federal Reserve Bank in whose District the main office of the despository institution is located or to the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. The Board will act promptly on all requests received directly or through Federal Reserve Banks.

[45 FR 69879, Oct. 22, 1980]

§ 204.122 Secondary market activities of International Banking Facilities.

(a) Questions have been raised concerning the extent to which International Banking Facilities may purchase (or sell) IBF-eligible assets such as loans (including loan participations), securities, CDs, and bankers' acceptances from (or to) third parties. Under the Board's regulations, as specified in § 204.8 of Regulation D, IBFs are limited, with respect to making loans and accepting deposits, to dealing only with certain customers, such as other IBFs and foreign offices of other organizations, and with the entity establishing the IBF. In addition, an IBF may extend credit to a nonbank customer only to finance the borrower's non-U.S. operations and may accept deposits from a nonbank customer that are used only to support the depositor's non-U.S. business.

(b) Consistent with the Board's intent, IBFs may purchase IBF-eligible assets [1] from, or sell such assets to, any domestic or foreign customer provided that the transactions are at arm's length without recourse. Therefore, an IBF may not purchase such assets from, or sell such assets to, affiliates of the institution establishing the IBF. (However, this restriction does not affect the IBF's ability to purchase (or sell) assets directly from (or to) the institution establishing the IBF; such purchases from the institution etablishing the IBF would continue to be subject to Eurocurrency reserve requirements except during the initial four-week transition period.) Since repurchase agreements are regarded as loans, transactions involving repurchase agreements are permitted only with customers who are otherwise eligible to deal with IBFs, as specified in Regulation D.

(c) In the case of purchases of assets, in order to determine that the Board's use-of-proceeds requirement has been met, it is necessary for the IBF (1) to ascertain that the applicable IBF notices and acknowledgments have been provided, or (2) in the case of loans or securities, to review the documentation underlying the loan or security, or accompanying the security (e.g., the prospectus or offering statement), to determine that the proceeds are being used only to finance the obligor's operations outside the U.S., or (3) in the case of loans, to obtain a statement from either the seller or borrower that the proceeds are being used only to finance operations outside the U.S., or in the case of securities, to obtain such a statement from the obligor, or (4) in the case of bankers' acceptances, to review the underlying documentation to determine that the proceeds are being used only to finance the parties' operations outside the United States.

(d) Under the Board's regulations, IBFs are not permitted to issue negotiable Euro-CDs, bankers' acceptances, or similar instruments. Accordingly, consistent with the Board's intent in this area, IBFs may sell such instruments issued by third parties that qualify as IBF-eligible assets provided that the IBF, its establishing institution and any affiliate of the institution establishing the IBF do not endorse, accept, or otherwise guarantee the instrument.

[46 FR 62812, Dec. 29, 1981]

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[1] In order for an asset to be eligible to be held by an IBF, the obligor or issuer of the instrument, or in the case of bankers' acceptances, the customer and any endorser or acceptor, must be an IBF-eligible customer.

§ 204.123 Sale of Federal funds by investment companies or trusts in which the entire beneficial interest is held exclusively by depository institutions.

(a) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96-221) imposes Federal Reserve requirements on transaction accounts and nonpersonnel time deposits held by depository institutions. The Board is empowered under the Act to determine what types of obligations shall be deemed a deposit. Regulation D—Reserve Requirements of Depository Institutions exempts from the definition of "deposit" those obligations of a depository institution that are issued or undertaken and held for the account of a domestic office of another depository institution (12 CFR 204.2(a)(1)(vii)(A)(1)). A parallel exemption in Regulation Q—Interest on Deposits exempts from the definition of "deposit" obligations issued to (or undertaken with respect to) and held for the account of a bank (12 CFR 217.1(f)(1)). These exemptions from the definition of "deposit" are known collectively as the "Federal funds" or "interbank" exemption.

(b) Title IV of the Depository Institutions Deregulation and Monetary Control Act of 1980 authorizes Federal savings and loan associations to invest in open-ended management investment companies provided the funds' investment portfolios are limited to the types of investments that a Federal savings and loan association could hold without limit as to percentage of assets (12 U.S.C. 1464(c)(1)(Q)). Such investments include mortgages, U.S. Government and agency securities, securities of states and political subdivisions, sales of Federal funds and deposits held at banks insured by the Federal Deposit Insurance Corporation. The Federal Credit Union Act authorizes Federal credit unions to aggregate their funds in trusts provided the trust is limited to such investments that Federal credit unions could otherwise make. Such investments include loans to credit union members, obligations of the U.S. government or secured by the U.S. government, loans to other credit unions, shares or accounts held at savings and loan associations or mutual savings banks insured by FSLIC or FDIC, sales of Federal funds and shares of any central credit union whose investments are specifically authorized by the board of directors of the Federal credit union making the investment (12 U.S.C. 1757(7)).

(c) The Board has considered whether an investment company or trust whose entire beneficial interest is held by depository institutions, as defined in Regulation D, would be eligible for the Federal funds exemption from Reserve requirements and interest rate limitations. The Board has determined that such investment companies or trusts are eligible to participate in the Federal funds market because, in effect, they act as mere conduits for the holders of their beneficial interest. To be regarded by the Board as acting as a conduit and, thus, be eligible for participation in the Federal funds market, an investment company or trust must meet each of the following conditions:

(1) The entire beneficial interest in the investment company or trust must be held by depository institutions, as defined in Regulation D. These institutions presently may participate directly in the Federal funds market. If the entire beneficial interest in the investment company or trust is held only by depository institutions, the Board will regard the investment company or trust as a mere conduit for the holders of its beneficial interest.

(2) The assets of the investment company or trust must be limited to investments that *all* of the holders of the beneficial interest could make directly without limit.

(3) Holders of the beneficial interest in the investment company or trust must not be allowed to make third party payments from their accounts with the investment company or trust. The Board does not regard an investment company or trust that offers third party payment capabilities or other similar services which actively transform the nature of the funds passing between the holders of the beneficial interest and the Federal funds market as mere conduits.

The Board expects that the above conditions will be included in materials filed by an investment company or trust with the appropriate regulatory agencies.

(d) The Board believes that permitting sales of Federal funds by investment companies or trusts whose beneficial interests are held exclusively by depository institutions, that invest solely in assets that the holders of their beneficial interests can otherwise invest in without limit, and do not provide third party payment capabilities offer the potential for an increased yield for thrifts. This is consistent with Congressional intent to provide thrifts with convenient liquidity vehicles.

[47 FR 8987, Mar. 3, 1982]

§ 204.124 Repurchase agreement involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and Federal agency securities

(a) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96-221) imposes Federal reserve requirements on transaction accounts and nonpersonal time deposits held by depository institutions. The Board is empowered under the Act to determine what types of obligations shall be deemed a deposit (12 U.S.C. 461). Regulation D—Reserve Requirements of Depository Institutions exempts from the definition of "deposit" those obligations of a depository institution that arise from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States government or any agency thereof that the depository institution is obligated to repurchase (12 CFR 204.2(a)(1)(vii)(B)). A parallel exemption in Regulation Q—Interest on Deposits exempts from the definition of "deposit" obligations that evidence an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase (12 CFR 217.1(f)(2)).

(b) The National Bank Act provides that a national bank may purchase for its own account investment securities under limitations and restrictions as the Comptroller may prescribe (12 U.S.C. 24, ¶ 7). The statute defines investment securities to mean marketable obligations evidencing indebtedness of any person in the form of bonds, notes, and debentures. The Act further limits a national bank's holdings of any one security to no more than an amount equal to 10 percent of the bank's capital stock and surplus. However, these limitations do not apply to obligations issued by the United States, general obligations of any state and certain obligations of federal agencies. In addition, generally a national bank is not permitted to purchase for its own account stock of any corporation. These restrictions also apply to state member banks (12 U.S.C. 335).

(c) The Comptroller of the Currency has permitted national banks to purchase for their own accounts shares of open-end investment companies that are purchased and sold at par (i.e., money market mutual funds) provided the portfolios of such companies consist solely of securities that a national bank may purchase directly (Banking Bulletin B-83-58). The Board of Governors has permitted state member banks to purchase, to the extent permitted under applicable state law, shares of money market mutual funds ("MMMF") whose portfolios consist solely of securities that the state member bank may purchase directly (12 CFR 208.123).

(d) The Board has determined that an obligation arising from a repurchase agreement involving shares of a MMMF whose portfolio consists wholly of securities of the United States government or any agency thereof[1] would not be a "deposit" for purposes of Regulations D and Q. The Board believes that a repurchase agreement involving shares of such a MMMF is the functional equivalent of a repurchase agreement directly involving United States government or agency obligations. A purchaser of shares of a MMMF obtains an interest in a *pro rata* portion of the assets that comprise the MMMF's portfolio. Accordingly, regardless of whether the repurchase agreement involves United States government or agency obligations directly or shares in a MMMF whose portfolio consists entirely of United States government or agency obligations, an equitable and undivided interest in United States and agency government obligations is being transferred. Moreover, the Board believes that this interpretation will further the purpose of the exemption in Regulations D and Q for repurchase agreements involving United States government or Federal obligations by enhancing the market for such obligations.

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[1] The term "United States government or any agency thereof" as used herein shall have the same meaning as in § 204.2(a)(1)(vii)(B) of Regulation D, 12 CFR 204.2(a)(1)(vii)(B).

[50 FR 13011, Apr. 2, 1985]

PART 205—ELECTRONIC FUND TRANSFERS

Sec.
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AUTHORITY: Pub. L. 95-630, 92 Stat. 3730 (15 U.S.C. 1693b).

§ 205.1 Authority, purpose, and scope.

(a) *Authority.* This regulation, issued by the Board of Governors of the Federal Reserve System, implements title IX (Electronic Fund Transfer Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*).

(b) *Purpose and scope.* In November 1978, the Congress enacted the Electronic Fund Transfer Act. The Congress found that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers, but that the unique characteristics of these systems make the application of existing consumer protection laws unclear, leaving the rights and liabilities of users of electronic fund transfer systems undefined. The Act establishes the basic rights, liabilities, and responsibilities of consumers who use electronic money transfer services and of financial institutions that offer these services. This regulation is intended to carry out the purposes of the Act, including, primarily, the protection of individual consumers engaging in electronic transfers. Except as otherwise provided, this regulation applies to all persons who are financial institutions as defined in § 205.2(i).

(Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100-0200.)

[44 FR 18480, Mar. 28, 1979, as amended at 49 FR 40797, Oct. 18, 1984]

§ 205.2 Definitions and rules of construction.

For the purposes of this regulation, the following definitions apply, unless the context indicates otherwise:

(a)(1) "Access device" means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer for the purpose of initiating electronic fund transfers.

(2) An access device becomes an "accepted access device" when the consumer to whom the access device was issued:

(i) Requests and receives, or signs, or uses, or authorizes another to use, the access device for the purpose of transferring money between accounts or obtaining money, property, labor or services;

(ii) Requests validation of an access device issued on an unsolicited basis; or

(iii) Receives an access device issued in renewal of, or in substitution for, an accepted access device, whether such access device is issued by the initial financial institution or a successor.

(b) "Account" means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held either directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(c) "Act" means the Electronic Fund Transfer Act (Title IX of the Consumer Credit Protection Act, 15 U.S.C. 1601 et seq.).

(d) "Business day" means any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions.

(e) "Consumer" means a natural person.

(f) "Credit" means the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(g) "Electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone. It includes all transfers resulting from debit card transactions, including those that do not involve an electronic terminal at the time of the transaction. The term does not include payments made by check, draft, or similar paper instrument at an electronic terminal.

(h) "Electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines.

(i) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a State or Federal mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer. The term also includes any person who issues an access device and agrees with a consumer to provide electronic fund transfer services.

(j) "Preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

(k) "State" means any State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the above.

(l) "Unauthorized electronic fund transfer" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include any electronic fund transfer (1) initiated by a person who was furnished with the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution involved that transfers by that person are no longer authorized, (2) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (3) that is initiated by the financial institution or its employee.

(m) Footnotes have the same legal effect as the text of the regulation.

[44 FR 18480, Mar. 28, 1979, as amended at 44 FR 59470, Oct. 15, 1979; 45 FR 8263, Feb. 2, 1980; 49 FR 40798, Oct. 18, 1984]

§ 205.3 Exemptions.

This Act and this regulation do not apply to the following:

(a) *Check guarantee or authorization services.* Any service that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument and that does not directly result in a debit or credit to a consumer's account.

(b) *Wire transfers.* Any wire transfer of funds for a consumer through the Federal Reserve Communications System or other similar network that is used primarily for transfers between financial institutions or between businesses.

(c) *Certain securities or commodities transfers.* Any transfer the primary purpose of which is the purchase or sale of securities or commodities regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(d) *Certain automatic transfers.* Any transfer under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer.

(1) Between a consumer's accounts within the financial institution, such as a transfer from a checking account to a savings account;

(2) Into a consumer's account by the financial institution, such as the crediting of interest to a savings account;[1a]

(3) From a consumer's account to an account of the financial institution, such as a loan payment;[1a] or

(4) From a consumer's account to an account of another consumer, within the financial institution, who is a member of the transferor's family.

(e) *Certain telephone-initiated transfers.* Any transfer of funds that (1) is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution and (2) is not under a telephone bill-payment or other prearranged plan or agreement in which periodic or recurring transfers are contemplated.

(f) *Trust accounts.* Any trust account held by a financial institution under a bona fide trust agreement.

(g) *Preauthorized transfers to small financial institutions.* (1) Any preauthorized transfer to or from an account if the assets of the account-holding financial institution are $25 million or less on December 31.[1a]

(2) If the account-holding financial institution's assets subsequently exceed $25 million, the institution's exemption for this class of transfers shall terminate one year from the end of the calendar year in which the assets exceed $25 million.

[44 FR 18480, Mar.28, 1979, as amended at 44 FR 59470, Oct. 15, 1979; 45 FR 66347, Oct. 6, 1980; 46 FR 2973, Jan. 13, 1981; 46 FR 9920, Jan. 30, 1981; 47 FR 44713, Oct. 12, 1982]

§ 205.4 Special requirements.

(a) *Services offered by two or more financial institutions.* Two or more financial institutions that jointly provide electronic fund transfer services may contract among themselves to comply with the requirements that this regulation imposes on any or all of them. When making disclosures under §§ 205.7 and 205.8, a financial institution that provides electronic fund transfer services under an agreement with other financial institutions need make only those disclosures which are within its knowledge and the purview of its relationship with the consumer for whom it holds an account.

(b) *Multiple accounts and account holders.* (1) If a consumer holds two or more accounts at a financial institution, the institution may combine the disclosures required by the regulation into one statement (for example, the financial institution may mail or deliver a single periodic statement or annual error resolution notice to a consumer for multiple accounts held by that consumer at that institution).

(2) If two or more consumers hold a joint account from or to which electronic fund transfers can be made, the financial institution need provide only one set of the disclosures required by the regulation for each account.

[1a] The financial institution remains subject to section 913 of the Act regarding compulsory use of electronic fund transfers. A financial institution may, however, require the automatic repayment of credit that is extended under an overdraft credit plan or that is extended to maintain a specified minimum balance in the consumer's account. Financial institutions also remain subject to sections 915 and 916 regarding civil and criminal liability.

(c) *Additional information; disclosures required by other laws.* At the financial institution's option, additional information or disclosures required by other laws (for example, Truth in Lending disclosures) may be combined with the disclosures required by this regulation.

[44 FR 59470, Oct. 15, 1979, as amended at 45 FR 8263, Feb. 6, 1980]

§ 205.5 Issuance of access devices.

(a) *General rule.* A financial institution may issue an access device to a consumer only:

(1) In response to an oral or written request or application for the device;[1b] or

(2) As a renewal of, or in substitution for, an accepted access device, whether issued by the initial financial institution or a successor.

(3) As a renewal of, or in substitution for, an access device issued before February 8, 1979 (other than an accepted access device, which can be renewed or substituted under paragraph (a)(2) of this section), provided that the disclosures set forth in § 205.7(a)(1), (2), and (3) accompany the renewal or substitute device; except that for a renewal or substitution that occurs before July 1, 1979, the disclosures may be sent within a reasonable time after the renewal or substitute device is issued.

(b) *Exception.* Notwithstanding the provisions of paragraph (a)(1) of this section, a financial institution may distribute an access device to a consumer on an unsolicited basis if:

(1) The access device is not validated;

(2) The distribution is accompanied by a complete disclosure, in accordance with § 205.7(a), of the consumer's rights and liabilities that will apply if the access device is validated;

(3) The distribution is accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of the access device if validation is not desired; and

(4) The access device is validated only in response to the consumer's oral or written request or application for validation and after verification of the consumer's identity by any reasonable means, such as by photograph, fingerprint, personal visit, or signature comparison. An access device is considered validated when a financial institution has performed all procedures necessary to enable a consumer to use it to initiate an electronic fund transfer.

(c) *Relation to Truth in Lending.* (1) The Act and this regulation govern:

(i) Issuance of access devices;

(ii) Addition to an accepted credit card, as defined in 12 CFR 226.12(a)(2), footnote 21 (Regulation Z), of the capability to initiate electronic fund transfers; and

(iii) Issuance of access devices that permit credit extensions only under a preexisting agreement between a consumer and a financial institution to extend the credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) The Truth in Lending Act (15 U.S.C. 1601 et seq.) and 12 CFR Part 226 (Regulation Z), which prohibit the unsolicited issuance of credit cards, govern

(i) Issuance of credit cards as defined in 12 CFR 226.2(a)(15);

(ii) Addition of a credit feature to an accepted access device; and

(iii) Issuance of credit cards that are also access devices, except as provided in paragraph (c)(1)(iii) of this section.

[44 FR 18480, Mar. 28, 1979. Redesignated and amended at 44 FR 59470, Oct. 15, 1979; 45 FR 8263, Feb. 6, 1980; 46 FR 2973, Jan. 13, 1981; 48 FR 14880, Apr. 6, 1983]

§ 205.6 Liability of consumer for unauthorized transfers.

(a) *General rule.* A consumer is liable, within the limitations described in paragraph (b) of this section, for unauthorized electronic fund transfers involving the consumer's account only if:

(1) The access device used for the unauthorized transfers is an accepted access device;

[1b] In the case of a joint account, a financial institution may issue an access device to each account holder for whom the requesting holder specifically requests an access device.

(2) The financial institution has provided a means (such as by signature, photograph, fingerprint, or electronic or mechanical confirmation) to identify the consumer to whom the access device was issued; and

(3) The financial institution has provided the following information, in writing, to the consumer:

(i) A summary of the consumer's liability under this section, or under other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of promptly reporting loss or theft of the access device or unauthorized transfers.

(ii) The telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(iii) The financial institution's business days, as determined under § 205.2(d), unless applicable State law or an agreement between the consumer and the financial institution sets a liability limit not greater than $50.

(b) *Limitations on amount of liability.* The amount of a consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall not exceed $50 or the amount of unauthorized transfers that occur before notice to the financial institution under paragraph (c) of this section, whichever is less, unless one or both of the following exceptions apply:

(1) If the consumer fails to notify the financial institution within 2 business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of $500 or the sum of

(i) $50 or the amount of unauthorized electronic fund transfers that occur before the close of the 2 business days, whichever is less, and

(ii) The amount of unauthorized electronic fund transfers that the financial institution establishes would not have occurred but for the failure of the consumer to nofity the institution within 2 business days after the consumer learns of the loss or theft of the access device, and that occur after the close of 2 business days and before notice to the financial institution.

(2) If the consumer fails to report within 60 days of transmittal of the periodic statement any unauthorized electronic fund transfer that appears on the statement, the consumer's liability shall not exceed the sum of

(i) The lesser of $50 or the amount of unauthorized electronic fund transfers that appear on the periodic statement or that occur during the 60-day period, and

(ii) The amount of unauthorized electronic fund transfers that occur after the close of the 60 days and before notice to the finanical institution and that the financial institution establishes would not have occurred but for the failure of the consumer to notify the financial institution within that time.

(3) Paragraphs (b)(1) and (2) of this section may both apply in some circumstances. Paragraph (b)(1) shall determine the consumer's liability for any unauthorized transfers that appear on the periodic statement and occur before the close of the 60-day period, and paragraph (b)(2)(ii) shall determine liability for transfers that occur after the close of the 60-day period.

(4) If a delay in notifying the financial institution was due to extenuating circumstances, such as extended travel or hospitalization, the time periods specified above shall be extended to a reasonable time.

(5) If applicable State law or an agreement between the consumer and financial institution imposes lesser liability than that provided in paragraph (b) of this section, the consumer's liability shall not exceed that imposed under that law or agreement.

(c) *Notice to financial institution.* For purposes of this section, notice to a financial institution is given when a consumer takes such steps as are reasonably necessary to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive the information. Notice in writing is considered given at the time the consumer deposits the notice in the mail or delivers the notice for transmission by any other usual means to the financial institution. Notice in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier. Notice is also considered given when the financial institution becomes aware of circumstances that lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be made.

(d) *Relation to Truth in Lending.* (1) A consumer's liability for an unauthorized electronic fund transfer shall be determined solely in accordance with this section if the electronic fund transfer

(i) Was initiated by use of an access device that is also a credit card as defined in 12 CFR 226.2(a)(15), or

(ii) Involves an extension of credit under an agreement between a consumer and a financial institution to extend the credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) A consumer's liability for unauthorized use of a credit card that is also an access device but that does not involve an electronic fund transfer shall be determined solely in accordance with the Truth in Lending Act and 12 CFR Part 226 (Regulation Z).

[44 FR 18480, Mar. 28, 1979, as amended at 44 FR 33839, June 13, 1979; 44 FR 46434, Aug. 8, 1979; Redesignated and amended at 44 FR 59470, Oct. 15, 1979; 48 FR 14881, Apr. 6, 1983]

§ 205.7 Initial disclosure of terms and conditions.

(a) *Content of disclosures.* At the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving a consumer's account, a financial institution shall disclose to the consumer, in a readily understandable written statement that the consumer may retain, the following terms and conditions of the electronic fund transfer service, as applicable:

(1) A summary of the consumer's liability under § 205.6, or other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, the advisability of promptly reporting loss or theft of the access device or unauthorized transfers.

(2) The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) The financial institution's business days, as determined under § 205.2(d).

(4) The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. The details of the limitations need not be disclosed if their confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) Any charges for electronic fund transfers or for the right to make transfers.

(6) A summary of the consumer's right to receive documentation of electronic fund transfers, as provided in §§ 205.9, 205.10(a), and 205.10(d).

(7) A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for initiating a stop-payment order, as provided in § 205.10(c).

(8) A summary of the financial institution's liability to the consumer for its failure to make or to stop certain transfers under section 910 of the Act.

(9) The circumstances under which the financial institution in the ordinary course of business will disclose information to third parties concerning the consumer's account.

(10) A notice that is substantially similar to the following notice concerning error resolution procedures and the consumer's rights under them:

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

Telephone us at [insert phone number]

or

Write us at [insert address]

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will tell you the results of our investigation within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will recredit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not recredit your account.

If we decide that there was no error, we will send you a written explanation within 3 business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

(b) *Timing of disclosures for accounts in existence on May 10, 1980.* A financial institution shall mail or deliver to the consumer the information required by paragraph (a) of this section on or before June 9, 1980, or with the first periodic statement required by § 205.9(b) after May 10, 1980, whichever is earlier, for any account that is open on May 10, and

(1) From or to which electronic fund transfers were made prior to May 10, 1980;

(2) With respect to which a contract for such transfers was entered into between a consumer and a financial institution; or

(3) For which an access device was issued to a consumer.

[44 FR 59470, Oct. 15, 1979, as amended at 45 FR 8263, Feb. 6, 1980]

§ 205.8 Change in terms; error resolution notice.

(a) *Change in terms.* A financial institution shall mail or deliver a written notice to the consumer at least 21 days before the effective date of any change in a term or condition required to be disclosed under § 205.7(a) if the change would result in increased fees or charges, increased liability for the consumer, fewer types of available electronic fund transfers, or stricter limitations on the frequency or dollar amounts of transfers. Prior notice need not be given where an immediate change in terms or conditions is necessary to maintain or restore the security of an electronic fund transfer system or account. However, if a change required to be disclosed under this paragraph is to be made permanent, the financial institution shall provide written notice of the change to the consumer on or with the next regularly scheduled periodic statement or within 30 days, unless disclosure would jeopardize the security of the system or account. However, if such a change is to be made permanent, the financial institution shall provide written notice of the change to the consumer on or with the next regularly scheduled periodic statement or within 30 days, unless disclosure would jeopardize the security of the system or account.

(b) *Error resolution notice.* For each account from or to which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, the notice set forth in § 205.7(a)(10). Alternatively, a financial institution may mail or deliver a notice that is substantially similar to the following notice on or with each periodic statement required by § 205.9(b):

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

Telephone us at [insert telephone number]

or

Write us at [insert address]

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as

you can why you believe there is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will recredit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

[44 FR 59471, Oct. 15, 1979, as amended at 45 FR 8264, Feb. 6, 1980]

§ 205.9 Documentation of transfers.

(a) *Receipts at electronic terminals.* At the time an electronic fund transfer is initiated at an electronic terminal by a consumer, the financial institition shall make available[2] to the consumer a written receipt of the transfer(s) that clearly sets forth the following information, as applicable:

(1) The amount of the transfer. A charge for the transfer may be included in this amount if the terminal is owned or operated by a person other than the financial institution holding the consumer's account, provided the amount of the charge is disclosed on the receipt and on a sign posted on or at the terminal.

(2) The calendar date the consumer initiated the transfer.

(3) The type of transfer and the type of the consumer's account(s)[3] to or from which funds are transferred, such as "withdrawal from checking," "transfer from savings to checking," or "payment from savings." These descriptions may be used for transfers to or from accounts that are similar in function to checking accounts (such as share draft or negotiable order of withdrawal accounts) or to savings accounts (such as share accounts). Codes may be used only if they are explained elsewhere on the receipt.

(4) A number or code that uniquely identifies the consumer initiating the transfer, the consumer's account(s), or the access device used to initiate the transfer.

(5) The location (in a form prescribed by paragraph (b)(1)(iv) of this section) of the terminal at which the transfer was initiated or an identification (such as a code or terminal number).

(6) The name of any third party to or from whom funds are transferred; a code may be used only if it is explained elsewhere on the receipt. This requirement does not apply if the name is provided by the consumer in a form that the electronic terminal cannot duplicate on the receipt.

(b) *Periodic statements.* For any account to or from which electronic fund transfers can be made, the financial institution shall mail or deliver a statement for each monthly or shorter cycle in which an electonic fund transfer has occurred, but at least a quarterly statement if no transfer has occurred. The statement shall include the following, as applicable:

(1) For each electronic fund transfer occurring during the cycle,[4]

(i) The amount of the transfer. If a transfer charge was added at the time of initiation by the owner or operator of an electronic terminal in accordance with paragraph (a)(1) of this section, that charge may be included in the amount of the transfer.

(ii) The date the transfer was credited or debited to the consumer's account.

(iii) The type of transfer and the type of the consumer's account(s) to or from which funds were transferred.

(iv) For each transfer initiated by the consumer at an electronic terminal[4a], the location that appeared on the receipt or, if an identification (such as a code or terminal number) was used, that identification and one of the following descriptions of the terminal's location:

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[2] A financial institution may arrange for a third party, such as a merchant to make the receipt available.

[3] If more than one account of the same type may be accessed by a single access device, the accounts must be uniquely identified unless the terminal is incapable of such identification and was purchased or ordered by the financial institution prior to February 6, 1980. The type of account need not be identified if the access device may access only one account at that terminal.

[4] The information required by paragraph (b)(1) of this section may be provided on accompanying documents. Codes explained on the statement or on accompanying documents are acceptable.

[4a] A financial institution need not identify the terminal location for deposits of cash, checks, drafts, or similar paper instruments at electronic terminals.

(A) The address, including number and street (the number may be omitted if the street alone uniquely identifies the terminal location) or intersection, city, and state or foreign country;[5]

(B) A generally accepted name for a specific location (such as a branch of the financial institution, a shopping center, or an airport), city, and state or foreign country;[6] or

(C) The name of the entity at whose place of business the terminal is located or which owns or operates the terminal (such as the financial institution[7] or the seller of goods or services), city, and state or foreign country.[8]

(v) The name of any third party to or from whom funds were transferred.[9]

(2) The number(s) of the consumer's account(s) for which the statement is issued.

(3) The amount of any fees or charges, other than a finance charge under 12 CFR 226.7(f), assessed against the account during the statement period for electronic fund transfers or the right to make such transfers, or for account maintenance.

(4) The balances in the consumer's account(s) at the beginning and at the close of the statement period.

(5) The address and telephone number to be used for inquiry or notice of errors, preceded by "Direct Inquiries To:" or similar language. Alternatively, the address and telephone number may be provided on the notice of error resolution procedures set forth in § 205.8(b).

(6) If the financial institution uses the notice procedure set forth in § 205.10(a)(1)(iii), the telephone number the consumer may call to ascertain whether a preauthorized transfer to the consumer's account has occurred.

(c) *Documentation for certain passbook accounts.* In the case of a consumer's passbook account which may not be accessed by any electronic fund transfers other than preauthorized transfers to the account,[9a] the financial institution may, in lieu of complying with paragraph (b) of this section, upon presentation of the consumer's passbook, provide the consumer with documentation by entering in the passbook or on a separate document the amount and date of each electronic fund transfer made since the passbook was last presented.

(d) *Periodic statements for certain non-passbook accounts.* If a consumer's account other than a passbook account may not be accessed by any electronic fund transfers other than preauthorized transfers to the account,[9a] the financial institution need provide the periodic statement required by paragraph (b) of this section only quarterly.

(e) *Use of abbreviations.* A financial institution may use commonly accepted or readily understandable abbreviations in complying with the documentation requirements of this section.

(f) *Receipt requirements for certain cash-dispensing terminals.* The failure of a financial institution to comply with the requirement of paragraph (a) of this section that a receipt be made available to the consumer at the time an electronic fund transfer is initiated at an electronic terminal shall not constitute a violation of the Act or this regulation, provided:

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[5] The city and state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in the same city. The state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state. The state may also be omitted for transfers occurring at terminals within 50 miles of the financial institution's main office.

[6] See footnote 5.

[7] If the financial institution providing the statement owns or operates terminals at more than one location, it shall describe the location of its electronic terminals by use of paragraphs (b)(1)(iv)(A) or (B) of this section.

[8] See footnote 5.

[9] A financial institution need not identify third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal.

[9a] Accounts that also are accessible by the intra-institutional transfers described in paragraph (h) of this section may continue to be documented in accordance with paragraph (c) or (d) of this section.

(1) The transfer occurs at an electronic terminal that:

(i) Does not permit transfers other than cash withdrawals by the consumer,

(ii) Cannot make a receipt available to the consumer at the time the transfer is initiated,

(iii) Cannot be modified to provide a receipt at that time, and

(iv) Was purchased or ordered by the financial institution prior to February 6, 1980; and

(2) The financial institution mails or delivers a written receipt to the consumer that complies with the other requirements of paragraph (a) of this section on the next business day following the transfer.

(g) *Delayed effective date for certain periodic statement requirements.* The failure of a financial institution to describe an electronic fund transfer in accordance with the requirements of paragraphs (b)(1) (iv) and (v) of this section shall not constitute a violation of the Act or this regulation unless the transfer occurs on or after August 10, 1980, if, when a transfer involves a payment to another person, the financial institution, upon the consumer's request, and without charge, promptly provides the consumer with proof that such a payment was made.

(h) *Periodic statements for certain intra-institutional transfers.* A financial institution need not provide the periodic statement required by paragraph (b) of this section for an account accessed only by electronic fund transfers initiated by the consumer to or from another account of the consumer for which the financial institution documents transfers in compliance with paragraph (b) of this section.

(i) *Documentation for foreign-initiated transfers.* Failure to provide the terminal receipt and periodic statement required by paragraphs (a) and (b) of this section for a particular electronic fund transfer shall not be deemed a failure to comply with this regulation, if:

(1) The transfer is not initiated in a state as defined in § 205.2(k); and

(2) In accordance with § 205.11, the financial institution treats an inquiry for clarification or documentation as a notice of error and corrects the error.

[45 FR 8264, Feb. 6, 1980, as amended at 45 FR 25383, Apr. 15, 1980; 45 FR 66347, Oct. 6, 1980; 47 FR 44713, Oct. 12, 1982; 49 FR 40798, Oct. 18, 1984]

§ 205.10 Preauthorized transfers.

(a) *Preauthorized transfers to a consumer's account.* (1) Where a consumer's account is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once every 60 days, except where the payor provides positive notice to the consumer that the transfer has been initiated, the financial institution shall provide notice by one of the following means:

(i) The institution shall transmit oral or written notice to the consumer, within 2 business days after the transfer, that the transfer occurred;

(ii) The institution shall transmit oral or written notice to the consumer, within 2 business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(iii) The institution shall provide a readily available telephone line that the consumer may call to ascertain whether or not the transfer occured, and shall disclose the telephone number on the initial disclosures required by § 205.7 and on each periodic statement.

(2) A financial institution that receives a preauthorized transfer of the type described in paragraph (a)(1) of this section shall credit the amount of the transfer as of the day the funds for the transfer are received.

(b) *Preauthorized transfers from a consumer's account; written authorization.* Preauthorized electronic fund transfers from a consumer's account may be authorized by the consumer only in writing, and a copy of the authorization shall be provided to the consumer by the party that obtains the authorization from the consumer.

(c) *Consumer's right to stop payment.* A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at any time up to 3 business days before the scheduled date of the transfer. The financial institution may require written confirmation of the stop-payment order to be made within 14 days of an oral notification if, when the oral notification is made, the requirement is disclosed to the consumer together with the address to which confirmation should be sent. If written confirmation has been required by the financial institution, the oral stop-payment order shall cease to be binding 14 days after it has been made.

(d) *Notice of transfers varying in amount.* Where a preauthorized electronic fund transfer from the consumer's account varies in amount from the previous transfer relating to the same authorization, or the preauthorized amount, the financial institution or the designated payee shall mail or deliver, at least 10 days before the scheduled transfer date, a written notice of the amount and scheduled date of the transfer. If the financial institution or designated payee informs the consumer of the right to receive notice of all varying transfers, the consumer may elect to receive notice only when a transfer does not fall within a specified range of amounts or, alternatively, only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

[44 FR 59471, Oct. 15, 1979, as amended at 45 FR 8265, Feb. 6, 1980]

§ 205.11 Procedures for resolving errors.

(a) *Definition of error.* For purposes of this section, the term "error" means:

(1) A unauthorized electronic fund transfer;

(2) An incorrect electronic fund transfer to or from the consumer's account;

(3) The omission from a periodic statement of an electronic fund transfer to or from the consumer's account that should have been included;

(4) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;

(5) The consumer's receipt of an incorrect amount of money from an electronic terminal;

(6) An electronic fund transfer not identified in accordance with the requirements of § 205.9 or § 205.10(a); or

(7) A consumer's request for any documentation required by § 205.9 or § 205.10(a), or for additional information or clarification concerning an electronic fund transfer. This includes any request for documentation, information, or clarification in order to assert an error within the meaning of paragraphs (a)(1) through (6) of this section. It does not include a routine inquiry about the balance in the consumer's account or a request for duplicate copies of documentation or other information that is made only for tax or other record-keeping purposes.

(b) *Notice of error from consumer.* (1) A notice of an error is an oral or written notice from the consumer that

(i) Is received by the financial institution[10] no later than 60 days after the institution

(A) Transmitted a periodic statement or provided documentation under § 205.9(c) on which the alleged error is first reflected; or

(B) Transmitted additional information, clarification, or documentation described in paragraph (a)(7) of this section that was initially requested in accordance with paragraph (b)(1)(i)(A) of this section;

(ii) Enables the financial institution to identify the consumer's name and account number; and

(iii) Except for errors described in paragraph (a)(7) of this section, indicates the consumer's belief, and the reasons for that belief, that an error exists in the consumer's account or is reflected on documentation required by § 205.9 or § 205.10(a), and indicates to the extent possible the type, the date, and the amount of the error.

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[10] A financial institution may require the consumer to give notice only at the telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.

(2) A financial institution may require a written confirmation to be received within 10 business days of an oral notice if, when the oral notice is given, the consumer is advised of the requirement and of the address to which confirmation must be sent.

(c) *Investigation of errors.* (1) After receiving a notice of an error, the financial institution shall promptly investigate the alleged error, determine whether an error occurred, and transmit the results of its investigation and determination to the consumer within 10 business days.

(2) As an alternative to the 10-business-day requirement of paragraph (c)(1) of this section, the financial institution shall investigate the alleged error and determine whether an error occurred, promptly but in no event later than 45 calendar days after receiving a notice of an error, and shall transmit the results of its investigation and determination to the consumer, provided

(i) The financial institution provisionally recredits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days after receiving the notice of error. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer may have occurred and that it has satisfied the requirements of § 205.6(a), it may withhold a maximum of $50 from the amount recredited;

(ii) The financial institution, promptly but no later than 2 business days after the provisional recrediting, orally reports or mails or delivers notice to the consumer of the amount and date of the recrediting and of the fact that the consumer will have full use of the funds pending the determination of whether an error occurred;

(iii) The financial institution gives the consumer full use of the funds provisionally recredited during the investigation; and

(iv) If the financial institution determines that no error occurred and debits the account, the institution gives notice of the debiting and continues to honor certain items as required by paragraph (f)(2) of this section.

(3) A financial institution shall comply with all requirements of this section except that it need not provisionally recredit the consumer's account if—

(i) It requires but does not receive timely written confirmation of oral notice of an error; or

(ii) The notice of an error involves an account that is subject to the margin requirements or other aspects of Regulation T (12 CFR Part 220).

(4) If a notice of an error involves an electronic fund transfer that was not initiated in a state as defined in § 205.2(k), or involves an electronic fund transfer resulting from a point-of-sale debit card transaction, the applicable time periods for action in subsections (c), (e), and (f) shall be 20 business days in place of 10 business days, and 90 calendar days in place of 45 calendar days.

(d) *Extent of required investigation.* (1) A financial institution complies with its duty to investigate, correct, and report its determination regarding an error described in paragraph (a)(7) of this section by transmitting the requested information, clarification, or documentation within the time limits set forth in paragraph (c) of this section. If the institution has provisionally recredited the consumer's account in accordance with paragraph (c)(2) of this section, it may debit the amount upon transmitting the requested information, clarification, or documentation.

(2) Except in the case of services covered by § 205.14, a financial institution's review of its own records regarding an alleged error will satisfy its investigation responsibilities under paragraph (c) of this section if the alleged error concerns a transfer to or from a third party and there is no agreement between the financial institution and the third party [11] regarding the type of

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[11] Institutions do not have an agreement for purposes of paragraph (d)(2) of this section solely because they participate in transactions under the federal recurring payments program, or that are cleared through an automated or other clearing house or similar arrangement for the clearing and settlement of fund transfers generally, or

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electronic fund transfer alleged in the error.

(3) A financial institution may make, without investigation, a final correction to a consumer's account in the amount or manner alleged by the consumer to be in error, but must comply with all other applicable requirements of this section.

(e) *Procedures after financial institution determines that error occurred.* If the financial institution determines that an error occurred, it shall

(1) Promptly, but no later than 1 business day after its determination, correct the error (subject to the liability provisions of § 205.6 (a) and (b)), including, where applicable, the crediting of interest and the refunding of any fees or charges imposed, and

(2) Promptly, but in any event within the 10-business-day or 45-day time limits, orally report or mail or deliver to the consumer notice of the correction and, if applicable, notice that a provisional credit has been made final.[12]

(f) *Procedures after financial institution determines that no error occurred.* If the financial institution determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer,

(1) The financial institution shall mail or deliver to the consumer a written explanation of its findings within 3 business days after concluding its investigation, but in no event later than 10 business days after receiving notice of the error if the institution is proceeding under paragraph (c)(1) of this section. The explanation shall include notice of the consumer's right to request the documents upon which the institution relied in making its determination.

(2) Upon debiting a provisionally recredited amount, the financial institution

(i) Shall orally report or mail or deliver notice to the consumer of the date and amount of the debiting and the fact that the financial institution will honor checks, drafts, or similar paper instruments payable to third parties and preauthorized transfers from the consumer's account (using the provisionally recredited funds) for 5 business days after transmittal of the notice.

(ii) Shall honor checks, drafts, or similar paper instruments payable to third parties and preauthorized transfers from the consumer's account (without charge to the consumer as a result of an overdraft) for 5 business days after transmittal of the notice. The institution need only honor items that it would have paid if the provisionally recredited funds had not been debited.

(3) Upon the consumer's request, the financial institution shall promptly mail or deliver to the consumer copies of the documents on which it relied in making its determination.

(g) *Withdrawal of notice of error.* The financial institution has no further error resolution responsibilities as to a consumer's assertion of an error if the consumer concludes that no error did in fact occur and voluntarily withdraws the notice.

(h) *Reassertion of error.* A financial institution that has fully complied with the requirements of this section with respect to an error has no further responsibilities under this section if the consumer subsequently reasserts the same error, regardless of the manner in which it is reasserted. This paragraph does not preclude the assertion of an error defined in paragraphs (a)(1) through (6) of this section following the assertion of an error described in paragraph (a)(7) of this section regarding the same electronic fund transfer.

(i) *Relation to Truth in Lending.* Where an electronic fund transfer also involves an extension of credit under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified mini-

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because they agree to be bound by the rules of such arrangements. An agreement that a third party will honor an access device is an agreement for purposes of this paragraph.

[12] This notice requirement may be satisfied by a notice on a periodic statement that is mailed or delivered within the 10-business-day or 45-day time limits and that clearly identifies the correction to the consumer's account.

mum balance in the consumer's account, the financial institution shall comply with the requirements of this section rather than those of 12 CFR 226.13 (a), (b), (c), (e), (f), and (h).

[45 FR 8265, Feb. 6, 1980, as amended at 48 FR 14881, Apr. 6, 1983; 49 FR 40798, Oct. 18, 1984]

§ 205.12 Relation to State law.

(a) *Premption of inconsistent State laws.* The Board shall determine, upon the request of any State, financial institution, or other interested party, whether the Act and this regulation preempt State laws relating to electronic fund transfers. Only those State laws that are inconsistent with the Act and this regulation shall be preempted and then only to the extent of the inconsistency. A State law is not inconsistent with the Act and this regulation if it is more protective of a consumer.

(b) *Standards for preemption.* The following are examples of the standards the Board will apply in determining whether a State law, or a provision of that law, is inconsistent with the Act and this regulation. Inconsistency may exist when State law:

(1) Requires or permits a practice or act prohibited by the Act or this regulation;

(2) Provides for consumer liability for unauthorized electronic fund transfers which exceeds that imposed by the Act and this regulation;

(3) Provides for longer time periods than the Act and this regulation for investigation and correction of errors alleged by a consumer, or fails to provide for the recrediting of the consumer's account during the institution's investigation of errors as set forth in § 205.11(c); or

(4) Provides for initial disclosures, periodic statements, or receipts that are different in content from that required by the Act and this regulation except to the extent that the disclosures relate to rights granted to consumers by the State law and not by the Act or this regulation.

(c) *Procedures for preemption.* Any request for a determination shall include the following:

(1) A copy of the full text of the State law in question, including any regulatory implementation or judicial interpretation of that law;

(2) A comparison of the provisions of State law with the corresponding provisions in the Act and this regulation, together with a discussion of reasons why specific provisions of State law are either consistent or inconsistent with corresponding sections of the Act and this regulation; and

(3) A comparison of the civil and criminal liability for violation of State law with the provisions of sections 915 and 916(a) of the Act.

(d) *Exemption for State-regulated transfers.* (1) Any State may apply to the Board for an exemption from the requirements of the Act and the corresponding provisions of this regulation for any class of electronic fund transfers within the State. The Board will grant such an exemption if the Board determines that:

(i) Under the law of the State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by the Act and the corresponding provisions of this regulation, and

(ii) There is adequate provision for State enforcement.

(2) To assure that the Federal and State courts will continue to have concurrent jurisdiction, and to aid in implementing the Act:

(i) No exemption shall extend to the civil liability provisions of section 915 of the Act; and

(ii) After an exemption has been granted, for the purposes of section 915 of the Act, the requirements of the applicable State law shall constitute the requirements of the Act and this regulation, except to the extent the State law imposes requirements not imposed by the Act or this regulation.

[44 FR 59471, Oct. 15, 1979]

§ 205.13 Administrative enforcement.

(a) *Enforcement by Federal agencies.* (1) Administrative enforcement of the Act and this regulation for certain financial institutions is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), National Credit Union Administration Board, Secretary of Transportation, and Securities and Exchange Commission.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements imposed under the Act and this regulation is enforced by the Federal Trade Commission.

(b) *Issuance of staff interpretations.* (1) Unofficial staff interpretations are issued at the staff's discretion where the protection of section 915(d) of the Act is neither requested nor required, or where a rapid response is necessary.

(2)(i) Official staff interpretations are issued at the discretion of designated officials. No interpretations will be issued approving financial institutions' forms or statements. Any request for an official staff interpretation of this regulation shall be made in writing and addressed to the Director of the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request shall contain a complete statement of all relevant facts concerning the transfer or service, and shall include copies of all pertinent documents.

(ii) Within 5 business days of receipt of a request, an acknowledgment will be sent to the person making the request. If the designated officials deem issuance of an official staff interpretation to be appropriate, the interpretation will be published in the FEDERAL REGISTER to become effective 30 days after the publication date. If a request for public comment is received, the effective date will be suspended. The interpretation will then be republished in the FEDERAL REGISTER and the public given an opportunity to comment. Any official staff interpretation issued after opportunity for public comment shall become effective upon publication in the FEDERAL REGISTER.

(3) Any request for public comment on an official staff interpretation of this regulation shall be made in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. It must be postmarked or received by the Secretary's office within 30 days of the interpretation's publication in the FEDERAL REGISTER. The request shall contain a statement setting forth the reasons why the person making the request believes that public comment would be appropriate.

(4) Pursuant to section 915(d) of the Act, the Board has designated the Director and other officials of the Division of Consumer and Community Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this regulation.

(c) *Record retention.* (1) Evidence of compliance with the requirements imposed by the Act and this regulation shall be preserved by any person subject to the Act and this regulation for a period of not less than 2 years. Records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information.

(2) Any person subject to the Act and this regulation that has actual notice that it is being investigated or is subject to an enforcement proceeding by an agency charged with monitoring that person's compliance with the Act and this regulation, or that has been served with notice of an action filed under section 910, 915, or 916(a) of the Act, shall retain the information required in paragraph (c)(1) of this section that pertains to the action or proceeding until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

[44 FR 59472, Oct. 15, 1979, as amended at 45 FR 8266, Feb. 6, 1980; 50 FR 8708, Mar. 5, 1985]

§ 205.14 Services offered by financial institutions not holding consumer's account.

(a) *Compliance by service-providing institution.* Except as provided in this section, where a financial institution issues an access device to a consumer to be used for initiating electronic fund transfers to or from the consumer's account held by another financial institution, and the service-providing institution does not have an agreement with the account-holding institution regarding the service, the service-providing institution shall comply with all requirements of the Act and this regulation that relate to the service or the electronic fund transfers made by the consumer under the service. For this purpose, the following special rules shall apply:

(1) Section 205.6 shall require the service-providing institution to reimburse the consumer for unauthorized electronic fund transfers in excess of the limits set by that section.

(2) Sections 205.7, 205.8, and 205.9 shall require the service-providing institution to provide those disclosures and documentation that are within its knowledge and the purview of its relationship with the consumer.

(3) Section 205.11(b)(1)(i) shall require the service-providing institution to extend by a reasonable time the time periods within which notice of an error must be received if a delay in notifying the service-providing institution was due to the fact that the consumer initially notified or attempted to notify the account-holding institution.

(4) Section 205.11(c)(2)(i) and (e)(1) shall require the service-providing institution to transfer funds, in the appropriate amount and within the applicable time period, to the consumer's account at the account-holding institution.

(5) Section 205.11(c)(2)(ii) shall require the service-providing institution to disclose the date on which it initiates a transfer to effect the provisional recredit.

(6) Section 205.11(f)(2) shall require the service-providing institution to notify the account-holding institution of the date until which the account-holding institution must honor any debit to the account as required by § 205.11(f)(2). If an overdraft results, the service-providing institution shall promptly reimburse the account-holding institution in the amount of the overdraft.

(b) *Compliance by account-holding institution.* An account-holding institution described in paragraph (a) of this section need not comply with the requirements of the Act and this regulation with respect to electronic fund transfers to or from the consumer's account made by the service-providing institution, except that the account-holding institution shall comply with § 205.11 by

(1) Promptly providing, upon the request of the service-providing institution information or copies of documents required for the purpose of investigating alleged errors or furnishing copies of documents to the consumer; and

(2) Honoring debits to the account in accordance with § 205.11(f)(2).

(c) *Definition of agreement.* For purposes of this section, an agreement between the service-providing and the account-holding institutions regarding the electronic fund transfer service refers to a specific agreement(s) among institutions (or among institutions and another person that participates in the operation of the service) which sets forth the rights and obligations of the institutions with respect to a service involving the issuance of an access device to the consumer. Institutions do not have such an agreement solely because they participate in transactions that are cleared through an automated or other clearing house or similar arrangement for the clearing and settlement of fund transfers generally, or because they agree to be bound by the rules of such an arrangement.

[45 FR 8266, Feb. 6, 1980]

APPENDIX A—MODEL DISCLOSURE CLAUSES

This appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of §§ 205.5(a)(3), (b)(2), and (b)(3), 205.6(a)(3), and 205.7. Section 915(d)(2) of the Act provides that use of these clauses in conjunction with other requirements of the regulation will protect financial institutions from liability under sections 915 and 916 of the Act to the extent that the clauses accurately reflect the institutions' electronic fund transfer services.

Financial institutions need not use any of the clauses, but may use clauses of their own design in conjunction with the model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The underscored catchlines are not part of the clauses and should not be used as such.

Financial institutions may make alterations, substitutions, or additions in the clauses in order to reflect the services offered, such as technical changes (e.g., substitution of a trade name for the word "card," deletion of inapplicable services, or substitution of lesser liability limits in section A(2)). Sections A(3) and A(9) include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address need not be repeated if referenced.

Section A(1)—Disclosure That Access Device Is Not Validated and How To Dispose of Device If Validation Is Not Desired (§ 205.5(b)(3))

(a) *Accounts using cards.* You cannot use the enclosed card to transfer money into or out of your account until we have validated it. If you do not want to use the card, please (destroy it at once by cutting it in half).

FINANCIAL INSTITUTION MAY ADD VALIDATION INSTRUCTIONS HERE

(b) *Accounts using codes.* You cannot use the enclosed code to transfer money into or out of your account until we have validated it. If you do not want to use the code, please (destroy this notice at once).

FINANCIAL INSTITUTION MAY ADD VALIDATION INSTRUCTIONS HERE

Section A(2)—Disclosure of Consumer's Liability for Unauthorized Transfers and Optional Disclosure of Advisability of Prompt Reporting (§ 205.7(a)(1))

(a) *Liability disclosure.* (Tell us AT ONCE if you believe your (card) (code) has been lost or stolen. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days, you can lose no more the $50 if someone used your (card) (code) without your permission.) (If you believe your (card) (code) has been lost or stolen, and you tell us within 2 business days after you learn of the loss or theft, you can lose no more than $50 if someone used your (card) (code) without your permission.)

If you do NOT tell us within 2 business days after you learn of the loss or theft of your (card) (code), and we can prove we could have stopped someone from using your (card) (code) without your permission if you had told us, you could lose as much as $500.

Also, if your statement shows transfers that you did not make, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

Section A(3)—Disclosure of Telephone Number and Address To Be Notified in Event of Unauthorized Transfer (§ 205.7(a)(2))

(a) *Address and telephone number.* If you believe your (card) (code) has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, call:

____

[Telephone number]

____

or write:

____

[Name of person or office to be notified]

____

[Address]

Section A(4)—Disclosure of What Constitutes Business Day of Institution (§ 205.7(a)(3))

(a) *Business day disclosure.* Our business days are (Monday through Friday) (Monday through Saturday) (any day including Saturdays and Sundays). Holidays are (not) included.

Section A(5)—Disclosure of Types of Available Transfers and Limits on Transfers (§ 205.7(a)(4))

(a) *Account access.* You may use your (card) (code) to (1) withdraw cash from your (checking) (or) (savings) account.

(2) Make deposits to your (checking) (or) (savings) account.

(3) Transfer funds between your checking and savings accounts whenever you request.

(4) Pay for purchases at places that have agreed to accept the (card) (code).

(5) Pay bills directly (by telephone) from your (checking) (or) (savings) account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

(b) *Limitations on frequency of transfers.* (1) You may make only [insert number, e.g., 3] cash withdrawals from our terminals each [insert time period, e.g., week].

(2) You can use your telephone bill-payment service to pay [insert number] bills each ([insert time period]) (telephone call).

(3) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(4) For security reasons, there are (other) limits on the number of transfers you can make using our (terminals) (telephone bill-payment service) (point-of-sale transfer service).

(c) *Limitations on dollar amounts of transfers.*

(1) You may withdraw up to [insert dollar amount] from our terminals each ([insert time period]) (time you use the (card) (code)).

(2) You may buy up to [insert dollar amount] worth of goods or services each ([insert time period]) (time you use the (card) (code)) in our point-of-sale transfer service.

Section A(6)—Disclosure of Charges for Transfers or Right To Make Transfers (§ 205.7(a)(5))

(a) *Per transfer charge.* We will charge you [insert dollar amount] for each transfer you make using our (automated teller machines) (telephone bill-payment service) (point-of-sale transfer service).

(b) *Fixed charge.* We will charge you [insert dollar amount] each [insert time period] for our (automated teller machine service) (telephone bill-payment service) (point-of-sale transfer service).

(c) *Average or minimum balance charge.* We will only charge you for using our (automated teller machines) (telephone bill-payment service) (point-of-sale transfer service) if the (average) (minimum) balance in your (checking account) (savings account) (accounts) falls below [insert dollar amount]. If it does, we will charge you [insert dollar amount] each (transfer) ([insert time period]).

Section A(7)—Disclosure of Account Information to Third Parties (§ 205.7(a)(9))

(a) *Account information disclosure.* We will disclose information to third parties about your account or the transfers you make: (1) Where it is necessary for completing transfers, or

(2) In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or

(3) In order to comply with government agency or court orders, or

(4) If you give us your written permission.

Section A(8)—Disclosure of Right to Receive Documentation of Transfers (§ 205.7(a)(6))

(a) *Terminal transfers.* You can get a receipt at the time you make any transfer to or from your account using one of our (automated teller machines) (or) (point-of-sale terminals).

(b) *Preauthorized credits.* If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company,

(we will let you know if the deposit is (not) made.)

(the person or company making the deposit will tell you every time they send us the money.)

(you can call us at (insert telephone number) to find out whether or not the deposit has been made.)

(c) *Periodic statements.* You will get a (monthly) (quarterly) account statement (unless there are no transfers in a particular month. In any case you will get the statement at least quarterly).

(d) *Passbook account where the only possible electronic fund transfers are preauthorized credits.* If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought in your passbook.

Section A(9)—Disclosure of Right To Stop Payment of Preauthorized Transfers, Procedure for Doing So, Right To Receive Notice of Varying Amounts, and Financial Institution's Liability for Failure To Stop Payment (§ 205.7(a)(6), (7), and (8))

(a) *Right to stop payment and procedure for doing so.* If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call us at (insert telephone number), or write us at (insert address), in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. (We will charge you (insert amount) for each stop-payment order you give.)

(b) *Notice of varying amounts.* If these regular payments may vary in amount, (we) (the person you are going to pay) will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(c) *Liability for failure to stop payment of preauthorized transfer.* If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

Section A(10)—Disclosure of Financial Institution's Liability for Failure To Make Transfers (§ 205.7(a)(8))

(a) *Liability for failure to make transfers. If we do not complete a transfer to or from* *your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:*

- If, through no fault of ours, you do not have enough money in your account to make the transfer.
- If the transfer would go over the credit limit on your overdraft line.
- If the automated teller machine where you are making the transfer does not have enough cash.
- If the (terminal) (system) was not working properly and you knew about the breakdown when you started the transfer.
- If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- There may be other exceptions stated in our agreement with you.

[44 FR 18480, Mar. 28, 1979, as amended at 44 FR 59473, Oct. 15, 1979; 45 FR 8267, Feb. 6, 1980]

SUPPLEMENT I—OFFICIAL STAFF INTERPRETATIONS

[REG. E; EFT-1]

§ 205.12 (a) and (b)—Preemption of certain provisions of the Michigan statute governing electronic fund transfers.

MARCH 23, 1981.

This is in response to your letter of . . ., in which you request that the Board determine the extent to which the Michigan statute governing electronic fund transfers is preempted by the Federal Electronic Fund Transfer (EFT) Act and Regulation E. The following is an official staff interpretation making such a determination, under authority delegated by the Board on August 8, 1980 (45 FR 54011). Preemption determinations have been made only with regard to those sections of the Michigan statute for which a decision was specifically requested. As section 919 of the Act provides, financial institutions will incur no liability for a good faith failure to comply with a State requirement that has been determined to be inconsistent and that is preempted.

The following general analysis was used in making the determinations about preemption. If the State law is the same as Federal law, no preemption occurs. If the State law is different from Federal law, but financial institutions can comply with both, State law is not preempted and institutions must comply with both laws. If State law is different from Federal law, and institutions may violate State law by complying with Federal law, the laws are inconsistent within the meaning of § 205.12 (a) and (b).
In this case, if State law is more protective
of the consumer, State law is not preempt-
ed. Otherwise, Federal law preempts State
law and institutions need comply only with
Federal law.

The preemption determinations were
based on a section-by-section analysis of the
Michigan statute and Regulation E. After
consideration of the inconsistencies between
each requirement of a given section and the
corresponding requirement in the Federal
law, the section was viewed as a whole. A
comparison of groups of related sections wa
also made. The statutory language, which
refers to inconsistencies in "provisions" o
Federal and State statutes, supports thi
type of analysis. This approach also avoid
the formation of the very complex hybri
rules that would result from preemption o
individual requirements within each section

You asked that several specific sections o
the Michigan statute be preempted. Th
final preemption determinations are as fol
lows:

1. Section 13 of the Michigan statute re
garding issuance of unsolicited access de
vices is inconsistent with § 205.5 of Regula
tion E, but is more protective of the con
sumer and therefore is not preempted b
the Federal law. State law provisions con
tributing to this conclusion include the re
quirements that an unsolicited access devic
be accepted in writing by the consume
that additional information be given to th
consumer after acceptance; and that the i
suance of unsolicited access devices be limi
ed to a financial institution's own custome
(whereas Regulation E permits issuance
any consumer).

2. Section 5(4) of the State statute, whic
defines unauthorized use of an acce
device, is inconsistent with § 205.2(1) of Re
ulation E. Since the State provisions cove
ing liability for unauthorized use of
access device have been preempted, the de
nition of unauthorized use is also preemp
ed. This treatment of related sections is ne
essary for a meaningful result.

3. Section 14 of the State statute, whic
governs the consumer's liability for una
thorized use of an account, is inconsiste
with § 205.6 of Regulation E. The State pr
vision is not more protective of the co
sumer and is preempted. The negligen
standard contained in the State statu
could result in the consumer's increased e
posure to liability. Under the State statut
negligent consumers appear to be liable f
all unauthorized transfers, and non-neg
gent consumers may be liable for su
transfers if they fail to notify a financial
stitution within 30 days of an unauthoriz
transfer. Regulation E limits liability bas
on the promptness of a consumer's notice
the financial institution, and imposes unli
ited liability for subsequent transfers aft

60 days have elapsed, rather than after 30 days as the State statute provides. Preemption of a negligence standard is also supported by the EFT Act's legislative history, which shows that the Congress rejected a negligence standard in the Federal law in favor of liability based on promptness of notification.

4. Section 15 of the State statute governing error resolution procedures is inconsistent with § 205.11 of Regulation E. Section 205.12(b)(3) of Regulation E specifies that longer time periods for error resolution provide a basis for a finding of inconsistency. The State statute permits a possible 70 days for errors to be resolved, while Regulation E permits a maximum of 45 days. Because the Michigan law is not more protective of the consumer, it is preempted.

5. Sections 17 and 18 of the State statute, which cover receipt and periodic statement requirements, are inconsistent with § 205.9 of Regulation E. Under § 205.12(b)(4), inconsistency may exist if State law provisions for receipts or periodic statements are different in content from those required under Federal law. Such differences exist between the requirements of the Michigan statute and the Federal provisions. The State statute is not more protective of the consumer since it provides for the consumer's paying the cost of getting a terminal receipt if a machine cannot furnish one at the time of a transfer. The State provisions governing receipts and periodic statements are therefore preempted.

6. Section 19 of the State statute regarding initial disclosures is inconsistent with § 205.7 of Regulation E, but is not preempted. Since the State provision requires initial disclosures to be given when an access card is issued, rather than at any time before the first electronic fund transfer is made, as Regulation E provides, the State law is more protective of the consumer. Therefore, the Michigan provision stands. Two items in the disclosure statement, however, must conform to the Federal requirements. Because the corresponding substantive sections of Federal law have preempted State law, the liability disclosure and the error resolution disclosure must conform to the Federal requirements.

The scope of the Michigan statute appears to be narrower than that of the Federal EFT Act and seems to cover only terminal-based transfers. To the extent that this is the case, the Federal provisions will continue to govern all electronic fund transfers that are outside the scope of the State statute.

This is an official staff interpretation of Regulation E, issued pursuant to § 205.13(b)(2) of Regulation E. It is limited to the facts and issues discussed above.

Sincerely,

JANET HART,
Director.

[46 FR 19217, Mar. 30, 1981]

SUPPLEMENT II—OFFICIAL STAFF INTERPRETATIONS

[Reg. E; EFT-2]

The following is an official staff interpretation of Regulation E (12 CFR Part 205) issued pursuant to § 205.13(b). Sectional references are to the regulation or the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*).

Section 205.2—Definitions and Rules of Construction

2-1 Q: *Access devices.* What are some examples of access devices?

A: Access devices include debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means that may be used by a consumer to initiate an electronic fund transfer. The term does not include magnetic tapes or other devices used internally by a financial institution to initiate electronic fund transfers. [§ 205.2(a)(1)]

2-2 Q: *Profit-sharing and pension accounts.* Are profit-sharing and pension accounts covered by the definition of account?

A: When such accounts are established under a trust agreement, as is generally the case, they are exempt from coverage by § 205.3(f). [§ 205.2(b)]

2-3 Q: *Escrow accounts.* Escrow accounts are frequently established to assure payment of items such as real estate taxes, insurance premiums, and completion of repairs or improvements; are they considered asset accounts?

A: No. These funds are not consumer asset accounts for purposes of the regulation. In an arrangement of this type, the funds are not solely in the consumer's control; control is shared with a financial institution, escrow agent, or other party. [§ 205.2(b)]

2-4 Q: *U.S. Savings Bond accounts.* Is an account that is established to accumulate funds for the purchase of U.S. Savings Bonds subject to the regulation?

A: No. Such accounts generally are not established by or in the control of the consumer, who has merely authorized the purchase of bonds in a given denomination and has set the periodic amount to be withheld or transferred for this purpose. [§ 205.2(b)]

2-5 Q: *Christmas or vacation club accounts.* Are Christmas club or vacation club accounts subject to the regulation?

A: Christmas club and vacation club accounts are consumer asset accounts. In a great many cases, however, they are not subject to the regulation because all *electronic* transfers to and from the account have been authorized in advance by the consumer and are to or from another account of the consumer at the same institution. [§§ 205.2 (b) and (g), 205.3(d)]

2-5.5 Q: *Retail repurchase agreements.* A retail repurchase agreement (repo) is essentially a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities. Is a repo an account for purposes of Regulation E?

A: While repos may not be deposits for purposes of some other banking regulations, repos are accounts as defined in Regulation E. [§ 205.2(b)]

2-6 Q: *Business day—substantially all business functions.* In the definition of business day, what does "substantially all business functions" include?

A: The phrase includes both the public and the back-office operations of the institution. For example, if the offices of an institution are open on Saturdays for handling some consumer transactions (such as deposits, withdrawals, and other teller transactions), but not for performing internal functions (such as investigating account errors), then Saturday is not a business day for that institution. In this case, Saturday does not count toward the various business-day standards set by the regulation for reporting lost or stolen access devices, resolving errors, etc. [§ 205.2(d)]

2-7 Q: *Business day—telephone line.* If an institution makes a telephone line available on Sundays for reporting the loss or theft of an access device, but performs no other business functions, is Sunday a business day?

A: No. Mere availability of a telephone line does not satisfy the "substantially all business functions" standard. [§ 205.2(d)]

2-8 Q: *Business day—duration.* Does business day refer only to the hours during which the financial institution carries on substantially all business functions?

A: For purposes of the various business-day standards set by the regulation, a business day includes the entire 24-hour period ending at midnight. This means that a notice satisfies the time limits even if given outside business hours. The regulation does not, however, require that telephone lines be available on a 24-hour basis. [§ 205.2(d)]

2-9 Q: *Business day—short hours.* If a financial institution engages in substantially all business functions until 12 noon on Saturdays instead of its normal 3 p.m. closing, are Saturdays business days?

A: The financial institution may determine, at its election, whether an abbreviated day is a business day. The regulation does not specify the number of hours that an institution must be open in order to have a business day. [§ 205.2(d)]

2-10 Q: *Fund transfer—payments in currency.* The term electronic fund transfer excludes payments made by check, draft, or similar paper instrument at an electronic terminal. What about payments made in currency at an electronic terminal?

A: Payments in currency are not electronic fund transfers because they do not debit or credit a consumer's account. [§ 205.2(g)]

2-11 Q: *Fund transfer—deposits of currency, checks.* Does the term electronic fund transfer include deposits of currency and checks at an automated teller machine (ATM)?

A: A deposit made at an ATM or other electronic terminal is an electronic fund transfer for purposes of the regulation if there is a specific agreement between the financial institution and the consumer for the provision of EFT services to or from the particular account to which the deposit is made. [§ 205.2(g); see § 205.9(b)(1)(iv), footnote 4a]

2-12 Q: *Fund transfer—payroll allotments to repay credit.* Does the term electronic fund transfer include preauthorized payroll allotments that are made directly to a creditor to repay a credit extension?

A: No, because these payments to a creditor do not debit or credit a consumer asset account. [§ 205.2(g)]

2-12.5 Q: *Fund transfer—withholding of income tax on interest.* A financial institution electronically debits a portion of the interest on a consumer account for transmittal to the Internal Revenue Service, to comply with withholding requirements. Is the debit subject to the regulation?

A: No. [§ 205.2(g)]

2-13 Q: *Fund transfer—withdrawal at another institution.* A financial institution issues an identification card to its customer for use at other financial institutions. To obtain funds, the consumer presents the card and signs a withdrawal authorization at the remote financial institution, which obtains approval by telephone from the account-holding institution before disbursing the funds to the consumer. The consumer's account is memo posted for the designated amount, but debiting of the consumer's account does not occur until the account-holding institution receives the signed withdrawal authorization. Is this an electronic fund transfer?

A: No, because the fund transfer is initiated by the consumer by paper means. [§ 205.2(g)]

2-14 Q: *Fund transfer—check truncation.* Are check truncation systems covered?

A: No, because the fund transfer is initiated by check, draft, or similar paper instrument. [§ 205.2(g)]

2-15 Q: *Fund transfer—payee information, non-electronic form.* If the payor provides the payee information (names, account numbers, and amount of individual credits) to the financial institution holding the payees' accounts by means of a paper listing and the institution then prepares MICR-encoded deposit slips, are these transfers subject to the regulation?

A: These transfers are not electronic fund transfers for purposes of the regulation. [§ 205.2(g)]

2-16 Q: *Fund transfer—composite checks.* An employer or other payor delivers a composite check made payable to a financial institution for crediting to consumers' accounts at the institution. The payee information is contained on magnetic tape. Are these transfers subject to the regulation?

A: No, these transfers are not electronic fund transfers. [§ 205.2(g)].

2-17 Q: *Fund transfer—ACH.* If the financial institution in question 2-16 holds only some of the consumers' accounts, and forwards the remaining credits to other institutions via an automated clearing house (ACH), are the subsequent transfers subject to the regulation?

A: Yes. The transfers made via the ACH are electronic fund transfers and are covered. [§ 205.2(g)]

2-18 Q: *Fund transfer—Social Security deposits, correspondent bank.* Under the U.S. Treasury's direct deposit program, Social Security benefits are sent via the ACH to the consumer's financial institution. Some institutions receive fund transfers through a correspondent bank, which sends a computer print-out listing the payees and the payment amounts, together with a composite check payable to the financial institution. Are these transfers subject to the regulation?

A: Yes. Transfers made via the ACH are electronic fund transfers. [§ 205.2(g)]

NOTE: The Board is considering a regulatory amendment under its section 904(c) authority that, if adopted, would change this answer in the case of some institutions. See the Supplementary Information portion of this FEDERAL REGISTER notice. (See 46 FR 46876, Sept. 23, 1981)

2-19 Q: *Fund transfer—preauthorized debits by magnetic tape/composite check.* A company obtains authorization from consumers to debit their accounts periodically. The financial institution debits the consumers' accounts in accordance with billing information contained on magnetic tape provided by the payee, and sends the payee a composite check. Are these transfers subject to the regulation?

A: Yes, they are electronic fund transfers. [§ 205.2(g)]

2-20 Q: *Fund transfer—preauthorized debits by paper drafts, ACH.* A consumer authorizes a company to debit an account automatically for a payment. The company presents a paper draft that ultimately is debited against the consumer's account at the financial institution. Is the transfer subject to the regulation? What if the transfer is instead initiated through an ACH?

A: A transfer initiated by a draft drawn against the consumer's account is not an electronic fund transfer. Transfers via the ACH, on the other hand, are subject to the regulation. [§ 205.2(g)]

2-21 Q: *Fund transfer—preauthorized debits by individual checks.* A consumer signs an agreement authorizing the financial institution to make recurring payments to another party from the consumer's account, or to make recurring interest payments to the consumer. The institution periodically generates an individual check to the payee by computer. Are these transfers subject to the regulation?

A: No. The transfers are initiated by check (even though the check is computer-generated) and are exempt. [§ 205.2(g)]

2-21.5 Q: *Fund transfer—debit card transaction.* A consumer uses a debit card to purchase goods or services or to obtain cash. The card is used to generate a sales slip and no electronic terminal is involved. The consumer's asset account is later debited for the amount of the transaction. Is this transfer subject to the regulation?

A: Yes. The definition of "electronic fund transfer" covers transfers resulting from debit card transactions whether or not an electronic terminal is involved at the time of the transaction. (See question 2-24.) (§ 205.2(g))

2-22 Q: *Electronic terminal—telephone bill payment.* If a consumer uses a pay-by-phone plan to initiate a payment, must the financial institution provide a terminal receipt?

A: No. A telephone is not an electronic terminal for purposes of the receipt requirement, although the transfer itself is subject to the regulation. [§ 205.2(h)]

2-23 Q: *Home terminals.* Some financial institutions offer home banking services to their customers. The service will typically involve the use, for example, of a home computer terminal or a television set that is linked to the financial institution's computer by means of telephone or cable-television lines. Does the in-home equipment used by the consumer to initiate fund transfers qualify as an electronic terminal, and are the transfers subject to the terminal receipt requirement?

A: Any transfer, to or from the consumer's asset account, that is initiated by means of the home banking equipment is an electronic fund transfer and is subject to the regulation. However, although not expresaly excluded from the definition of electronic terminal, the home banking equipment used by the consumer for initiating fund transfers is analogous to a telephone in function. The home banking terminal is therefore similarly excepted from the electronic terminal definition and is not subject to the terminal receipt requirement. [§ 205.2(h)]

2-24 Q: *Point-of-sale terminals.* Does the regulation cover POS transactions in which the consumer presents an access device such as a debit card, and does the terminal receipt requirement apply?

A: The regulation applies to all transfers resulting from debit card transactions at point of sale whether or not an electronic terminal is involved. However, if there is no electronic terminal, a terminal receipt is not required and the periodic statement need not disclose terminal location. Point-of-sale terminals are electronic terminals for purposes of the regulation if they capture data electronically, for debiting or crediting to the consumer's asset account, using the consumer's access device—for example, when the consumer's personal identification number is required, in part, to activate the terminal. (See question 2-21.5. Also see § 205.11(c)(4) regarding the extension of certain error resolution deadlines.) (§§ 205.2(h) and 205.9(a))

2-25 Q: *Teller-operated terminals.* Does electronic terminal include a computer terminal operated by a teller or other employee of a financial institution, for purposes of the terminal receipt requirement?

A: Electronic terminal does not generally include computer equipment operated by a financial institution's employees or used internally by the financial institution to process transfers.

However, transfers initiated at such terminals by means of the consumer's access device (using the consumer's personal identification number, for example) are electronic fund transfers, and are subject to other requirements of the regulation. If the access device is used only for identification purposes or for determining the account balance, on the other hand, the transfers are not electronic fund transfers for purposes of the regulation. [§ 205.2(h)]

2-25.5 Q: *Card-activated telephones.* Does the regulation cover transfers to pay for calls made from a telephone that is activated when the consumer inserts a card into a magnetic strip or card reader, and does the terminal receipt requirement apply?

A: The regulation applies to transfers initiated electronically. As a result the electronic transfers from a consumer's account to pay for telephone calls are covered by the regulation as electronic fund transfers. A receipt is not required provided the only transfer of funds occurring as a result of the use of the card at the combination telephone/reader is to pay for the charges incurred by use of the telephone. [§ 205.2(h)]

2-26 Q: *Unauthorized transfer by institution's employee.* A financial institution's employee fraudulently takes money from a consumer's account by electronic means. Is the consumer liable for these transfers?

A: No. Unauthorized electronic fund transfers exclude any transfer initiated by the financial institution or its employees. The regulation's liability provisions do not apply and the consumer has no liability for such transfers. [§§ 205.2(1), 205.6]

2-27 Q: *Unauthorized transfers—access device obtained from the consumer.* A consumer is robbed or induced by fraud to furnish another person with an access device. Are transfers initiated at an ATM by the person who obtained the access device from the consumer "unauthorized electronic fund transfers"?

A: The transfers are unauthorized for purposes of Regulation E. Although the definition of "unauthorized electronic fund transfer" excludes any transfer initiated by a person "who was furnished with the access device to the consumer's account by the consumer," it assumes that the consumer has authorized the person to make transfers with the access device. This exclusion does not apply when the access device is "furnished" as the result of a robbery, or as the result of a fraud on the consumer in which the consumer does not authorize the use of the access device to make transfers. But if the consumer furnishes an access device and grants actual authority to make transfers to another person (a family member or coworker, for example) who then exceeds that authority, the consumer is liable for the transfers unless the financial institution has been notified that transfers by that person are no longer authorized. [§ 205.2(l)]

2-28 Q: *Unauthorized transfers—forced initiation.* A consumer is forced by a robber (at gunpoint, for example) to withdraw cash at an ATM. Do the liability limits for unauthorized transfers apply?

A. *Yes.* The transfer is unauthorized for purposes of Regulation E. Under these circumstances, the actions of the robber are tantamount to use of a stolen access device. (§§ 205.2(l) and 205.6)

Section 205.3—Exemptions

3-1 Q: *Check guarantee/authorization—memo posting.* A consumer's account is memo posted electronically at the time a payment to a third party is guaranteed or authorized under a check guarantee or authorization service, but the financial institution does not pay out the funds until the check is received. Is the service exempt?

A: Yes. Although a temporary hold is placed on the funds in the consumer's account, the guarantee does not result in a direct debit to the account. Debiting occurs when the check or draft is presented for collection. [§ 205.3(a)]

3-2 Q: *Wire transfer—instructions on magnetic tape.* If a transfer of funds to a financial institution is sent by Fedwire or a similar network, and the instructions for crediting individual consumers' accounts are transmitted on magnetic tape, are the transfers exempt?

A: Yes. A Fedwire or similar transfer of funds is exempt. [§ 205.3(b)]

3-3 Q: *Wire transfer—followed by ACH transfers.* A company sends funds by Fedwire or a similar network from one financial institution to another, and transfers via ACH are then made from the second institution to the accounts of company employees at still other institutions. Are the subsequent transfers exempt?

A: No. Although the Fedwire transfer is exempt, the ACH transfers to employees' accounts are subject to the regulation. [§§ 205.3(b), 205.2(g)]

3-3.5 Q: *Securities exemption—asset management accounts.* Some consumer financial services include both an electronic fund transfer service and the purchase and sale of securities. An example is a program involving a debit card issued by a bank or other card issuer which the consumer uses to purchase goods or services, and a money market mutual fund held by a broker. Debits are processed by the card issuer and transmitted to the broker for payment from the money market mutual fund. Are such transfers exempt from coverage under the securities exemption?

A: No. The exemption applies only to transfers whose "primary purpose" is the purchase or sale of securities—for example, a telephone order to a stockbroker to buy or sell securities. It does not apply to transfers resulting from use of the card for the purchase of goods or services or to obtain cash. (A transaction involving the purchase or sale of securities also remains subject to the Board's margin requirements under Regulation T (12 CFR Part 220) and other applicable securities regulations.) (§ 205.3(c))

3-4 Q: *Telephone transfer plans—applicability of intra-institutional exemption.* A consumer calls a financial institution, under a telephone transfer plan, to request a transfer of funds from a savings to a checking account. Does the exemption for automatic intra-institutional transfers apply?

A: No, because even though the transfer is between the consumer's accounts at the same institution, it occurs under a telephone transfer plan. (See question 3-17.) [§ 205.3(d)]

3-5 Q: *Compulsory use—preauthorized loan payments.* Preauthorized loan payments to the institution in which the consumer holds an account are exempt from the act and regulation generally, but are subject to the statutory prohibition against requiring repayment by means of preauthorized electronic fund transfers. If an institution required automatic payment by electronic means on credit agreements made before May 10, 1980, must the institution now offer those consumers an alternative means of repayment?

A: No, it is not necessary to do so. However, if a consumer who entered into such an agreement now asks to repay by other than electronic means, the financial institution should honor the request. [§ 205.3(d)(3), section 913]

3-6. Q: *Compulsory use—salary payments.* Preauthorized transfers from a financial institution to a consumer's account at the same institution are exempt from the Act and regulation generally, but are subject to the statutory prohibition against requiring an employee (as a condition of employment) to receive payroll deposits by electronic means at a particular institution. Does this prohibition apply to a financial institution as an employer?

A: Yes. The prohibition applies to all employers, including financial institutions. To comply with the law an employer could, for example, give its employees a choice as to the method of receiving payment—such as having their pay deposited at a particular institution, or receiving payment by check or cash.

As in the case of preauthorized loan payments, the compulsory use prohibition does not require an employer to offer alternative means of payment to employees who agreed to electronic deposits at a particular financial institution before May 10, 1980. However, if an employee asks to terminate this arrangement, the employer should honor the request. [§ 205.3(d)(2), section 913]

3-7 Q: *Compulsory use—payments from pledged savings.* Under certain types of graduated payment mortgages, a pledged savings account is used to supplement the monthly payments made by the borrower during an initial term—for example, in the first five years of the loan. The lender debits the pledged account automatically for the prescribed sum each month. That automatic transfer of funds is an integral feature of this type of alternative mortgage. Does the prohibition against compulsory use of electronic fund transfers bar this type of program?

A: No. The legislative history of the prohibition against compulsory use makes clear that it is permissible to offer a reduced annual percentage rate or some other cost-related incentive for an automatic repayment feature. The special terms of the pledged-account mortgage appear to be such an incentive. [§ 205.3(d)(3), section 913]

3.8 Q: *Automatic transfers—to joint account holder; to family member.* A consumer authorizes a financial institution to make periodic transfers from the consumer's account to an account held jointly with another consumer at the same institution. Are these transfers exempt? What about transfers to a family member's account?

A: Automatic transfers between a consumer's accounts within a financial institution are exempt; there need not be complete identity of account holders on the two accounts. Intra-family transfers that occur automatically within a financial institution are also exempt. [§ 205.3(d) (1) and (4)]

3-9 Q: *Automatic transfers—stop-payment charges/other items.* A financial institution electronically debits or credits consumer accounts for stop-payment charges, NSF charges, overdraft charges, provisional recredits, error adjustments, and similar items. Are these transfers exempt?

A: Yes. These are intra-institutional transfers that are initiated by the financial institution automatically, on the occurrence of certain events. [§ 205.3(d)]

3-10 Q: *Automatic transfers—group life insurance.* A financial institution offers group life insurance coverage to its account holders. The insurance can be obtained only through the financial institution, and the premiums can be paid only by means of an aggregate payment from the financial institution. Consumers' accounts are debited for their share of the premiums, and the financial institution makes payment on behalf of participating account holders for the total premium due under the group policy. Are these transfers exempt?

A: Yes. The debit to an individual consumer's account is an automatic transfer to an account of the financial institution. Because the group insurance can be obtained only through the institution, the transfer can be regarded as a bona fide intra-institutional transfer, even though the funds are ultimately transferred to a third party. [§ 205.3(d)(3)]

3-11 Q: *Automatic transfers—check order charges.* Check order charges are electronically debited to an account at the consumer's request. Checks can only be obtained and paid for through the financial institution. Are these transfers exempt?

A: Yes. [§ 205.3(d)(3)]

3-12 Q: *Automatic transfers—paired institutions in Rhode Island.* Rhode Island has a banking system that sanctions the pairing of a thrift institution with a commercial bank. The paired institutions frequently share quarters and have common tellers and teller stations. Customers receive a unified statement that distinguishes the two accounts by number and type, but not by institution. Are transfers that occur within the thrift-commercial pair intra-institutional transfers for purposes of the exemption for automatic transfers?

A: Yes. Under the unique circumstances that exist in Rhode Island, transfers within the paired institutions qualify for intra-institutional status. [§ 205.3(d)]

3.13 Q: *Automatic transfers—affiliated institutions.* Does a transfer to or from an account of the consumer at a subsidiary institution (or within the same holding company) qualify as an intra-institutional transfer?

A: No. [§ 205.3(d)]

3.14 Q: *Telephone transfer plan—existence of plan.* A financial institution transfers funds in response to a consumer's telephone request. Is the transfer subject to the regulation?

A: The transfer is an electronic fund transfer for purposes of the regulation if it occurs under a written plan or agreement between the consumer and the financial institution. In the absence of a written plan or agreement, telephone transfers that are made as an accommodation to the consumer are not covered. [§ 205.3(e)]

3-15 Q: *Telephone transfers—existence of plan; signature card.* A signature card signed by the consumer when the account was established contains a clause authorizing the financial institution to honor the consumer's telephone request for fund transfers. It is basically a hold-harmless agreement for the institution's behalf in the event the consumer requests and the institution agrees, at the time of the request, to make the transfer. Does the signature card constitute a written agreement?

A: A hold-harmless authorization on a signature card does not, by itself, constitute a written plan or agreement for purposes of the regulation. [§ 205.3(e)]

3-16 Q: *Telephone transfers—existence of plan; limits for Regulation D purposes.* In order to comply with Regulation D (Reserve Requirements of Depository Institutions), an institution prints a legend on a signature card or periodic statement or in a passbook, limiting the number of telephone transfers that the consumer can make from a savings account. Is this deemed to constitute a written plan?

A: No. The legend serves as a limitation on the account and does not, by itself, constitute a written plan or agreement. [§ 205.3(e)]

3-17 Q: *Telephone transfer plan—manual completion.* A consumer signs a telephone transfer agreement authorizing the financial institution to transfer funds between accounts within the institution. To initiate a transfer, the consumer telephones an employee of the institution, who then completes the transfer manually by means of debit memos, deposit slips, etc. Is the transfer exempt?

A: No. The transfer is inititated by telephone under a telephone transfer plan, and is therefore covered. The fact that the transfer is completed manually does not change this result. (See question 3-4.) [§§ 205.3(e), 205.2(g)]

3-18 Q: *Telephone transfer plan—individual transfers.* A financial institution's telephone transfer plan requires the consumer to make a separate request for each transfer from the consumer's account. That is, the consumer cannot authorize successive periodic payments to the designated payee by means of a single telephone call. Is this plan exempt?

A: No. The plan is covered. Even though the consumer cannot authorize recurring payments by means of one telephone request, there is an agreement that permits the consumer to inititate transfers from time to time. [§ 205.3(e)]

3-19 Q: *Telephone transfer plans—frequency of use.* Many consumers who sign up for a telephone transfer plan use it only occasionally, others not at all. Are transfers under the plan exempt, since the institution does not know when (or whether) a telephone transfer will be made?

A: No. Transfers under the plan are not exempt, because any transfer that does occur will be occurring under the prearranged plan. [§ 205.3(e)]

3-19.5 Q: *Telephone transfers—money market deposit accounts, retail repurchase agreements.* Are telephone transfers between a money market deposit account (or a retail repo account) and another account within the institution subject to the regulation?

A: The answer depends on whether the transfers are made pursuant to a written plan or agreement in which periodic or recurring transfers are contemplated. An agreement that merely permits the consumer to telephone institutions for the rollover of all or a portion of the funds at maturity does not meet this test. [§ 205.3(e)]

3-20 Q: *Trust accounts—IRAs under custodial agreements.* A financial institution holds certain Individual Retirement Accounts (IRAs) under custodial agreements. The custodial agreement is identical to a trust agreement, except that the parties are identified as depositor and custodian, rather than as grantor and trustee. Under the Internal Revenue Code, these accounts qualify as trusts so long as they otherwise meet the requirements for an IRA. Do these custodial accounts qualify for the regulation's exemption for trust accounts?

A: Yes. So long as the custodial agreements are the functional equivalent of trust agreements, they are exempt. [§ 205.3(f)]

3-21 Q: *Trust accounts—bona fide trust agreement.* What is a bona fide trust agreement?

A: The term is not defined by the Act or regulation. Financial institutions must therefore look to State or other law. The Board and the staff will not make determinations in individual cases. [§ 205.3(f)]

3-22 Q: *Small institution exemption—grace period.* If the assets of a previously exempt financial institution exceed $25 million on December 31, when must the institution begin complying with the regulation?

A: Such an institution would have a one-year grace period. For example, if the assets exceed $25 million on December 31, 1983, compliance is not required until January 1, 1985. On the other hand, a previously covered institution whose assets fall below $25 million on December 31, 1983, may take advantage of the exemption beginning on January 1, 1984. [§ 205.3(g)]

Section 205.4—Special Requirements

4-1 Q: *Shared system—scope of disclosures.* In a shared system, must an institution's initial disclosures include EFT charges and frequency or dollar limitations imposed by other institutions in the system, to the extent that the institution knows what these are?

A: No, because this information is not within the purview of the institution's relationship with its customer. [§§ 205.4(a), 205.7(a)]

4-2 Q: *Shared system—disclosures on behalf of another institution.* If institution B is making disclosures on behalf of institution A, which holds a consumer's account, may B limit the disclosures to those within its own knowledge?

A: No. The responsibility for making disclosures rests with the account-holding institution. The disclosures B makes for A (if A's responsibility is to be met) must include information within A's knowledge and the purview of A's relationship with A's customers. For example, B would disclose any electronic fund transfer charges imposed by A. [§ 205.4(a)]

4-3 Q: *Multiple accounts and account holders.* If X and Y open a joint checking account and a joint savings account at institution A, how many disclosure statements must A provide?

A: One, provided it covers terms and conditions on both accounts. The disclosure can be given to either X or Y. [§ 205.4(b)]

Section 205.5—Issuance of Access Devices

5-1 Q: *Renewal or substitution—one-for-one rule.* When an institution issues a renewal or substitute device, may it send more than one in place of the existing device?

A: No. For example, only one new card and personal identification number (PIN) may be issued to replace a card and PIN previously issued. [§ 205.5(a)(2)]

5-1.5 Q: *Issuance—addition of new accounts.* A consumer has been issued an access device for accessing an asset account. The account-holding institution wants to make an additional account accessible to the consumer by means of the same access device. May the institution do so without a request by the consumer?

A: No. Making an additional account accessible through an existing access device is equivalent to issuing an access device for that account, and is subject to the unsolicited issuance provisions. (Additional disclosures may be required in some circumstances. See question 7-5.5.) (§ 205.5(a)(1))

5-2 Q: *Renewal or substitution—change in services.* Must a renewal or substitute access device permit exactly the same types of electronic fund transfers as the original?

A: No. The renewal or substitute device may permit the same, additional, or fewer types. If a new type is added, new disclosures may be required. (See question 7-6.) If fewer types of transfers are possible, a change-in-terms notice is required. [§§ 205.5(a)(2), 205.7(a), 205.8(a)]

5-3 Q: *Renewal or substitution—successor institution.* Must a successor financial institution be an entity that replaced the original financial institution (for example, through a corporate merger or acquisition)?

A: No. A successor could also include, for example, a party that acquires accounts or takes over the operation of an EFT system. [§ 205.5(a)(2)]

5-4 Q: *Renewal or substitution—pre-2/8/79 device.* If an institution issued an access device on an unsolicited basis before February 8, 1979 (the effective date of the act's restrictions on unsolicited issuance), may the institution now issue a validated renewal or substitute device? Or may it do so only after receiving a request from the consumer?

A: If an institution does not know whether the unsolicited device became "accepted," it may issue a validated renewal or substitute device for a pre-2/8/79 device, provided certain disclosures accompany the renewal or substitute device. The renewal or substitute device does not become accepted"—and the consumer can incur no liability for unauthorized use—until the consumer uses or signs it, or authorizes someone else to use it. [§ 205.5(a)(3)]

5-4.5 Q: *Unsolicited issuance—PINs.* May a financial institution issue, without a specific request, validated personal identification numbers (PINs), thus allowing consumers to use their existing debit cards at automated teller machines or at merchant locations with POS terminals that require PINs?

A: Yes. A validated PIN may be issued to an existing debit card holder without a specific request provided the PIN cannot be used alone to make an electronic fund transfer. The institution may impose no liability on the consumer for unauthorized transfers involving use of the PIN, however, until this new combination of debit card and PIN becomes an "accepted access device" under the regulation. The card-PIN combination can be treated as an accepted access device, for example, if the card and PIN have been used and the consumer does not dispute having used them. (§§ 205.5(a) and 205.2(a))

5-5 Q: *Unsolicited issuance—functions of PIN.* If an institution issues a personal identification number at the consumer's request, could this issuance constitute both (1) a way of validating the debit card and (2) the means to identify the consumer (required as a condition of imposing liability for unauthorized transfers)?

A: Yes. [§§ 205.5(b), 205.6(a)(2)]

5-6 Q: *Unsolicited issuance—example of non-complying method.* An institution issues an unsolicited debit card and PIN to a consumer, thus enabling the consumer to initiate electronic fund transfers. The institution instructs the consumer *not* to use the card and PIN until the consumer has come to an office of the institution for verification of the consumer's identity. Does this procedure comply with the regulation?

A: No. In this case, the consumer could in fact use the card and PIN to initiate transfers (even though instructed not to do so); thus, the institution has not met the requirement that an unsolicited access device be unvalidated when issued. [§ 205.5(b)(1)]

5-7 Q: *Unsolicited issuance—example of complying method.* Same facts as in question 5-6, except that the institution's ATM system is initially programmed not to accept the consumer's card and PIN. After the consumer has requested validation of the card, the institution reprograms its computer so that the card and PIN now work in the system. Does this validation procedure comply with the regulation?

A: Yes, provided the institution verifies the consumer's identity by some reasonable means before reprogramming. [§ 205.5(b)(4)]

5-8 Q: *Unsolicited issuance—verification of identity.* Must an institution verify identity by one of the methods listed in the regulation?

A: No, they are merely examples. Any reasonable means of verifying identity will comply. Even if an institution uses reasonable means, however, if it fails to verify identity correctly so that an imposter succeeds in having a device validated—the consumer is not liable for any unauthorized transfers from the consumer's account. [§§ 205.5(b)(4), 205.2(a)(2), 205.6(a)(1)]

5-9 Q: *Unsolicited issuance—access device with overdraft feature.* The regulation permits the unsolicited issuance of an access device. Under this provision, may an institution issue a combined credit card/ access device to a consumer, without a request or application for the card?

A: Yes, provided that (1) the only credit feature is a preexisting overdraft credit line attached to the consumer asset account (or a similar line of credit that maintains a specified minimum balance in the account), and (2) the institution complies with the regulation's procedures for an unsolicited issuance. [§ 205.5(c)(1)(iii)]

5-10 Q: *Unsolicited issuance—other combined credit card/access devices.* Does the answer to question 5-9 mean that an institution is prohibited from issuing, on an unsolicited basis, any other type of combined credit card/access device?

A: No. Section 226.12(a)(1) of Regulation Z (Truth in Lending) permits creditors to issue, on an unsolicited basis, a card that may become a credit card provided that (1) the card at the time of issuance has a substantive purpose other than obtaining credit and cannot be used as a credit card and (2) any credit privilege that subsequently attaches is attached only upon the consumer's request. (The substantive purpose could be to initiate electronic fund transfers.) The rules of Regulation E on unsolicited issuance of access devices will, of course, continue to apply. [§ 205.5(c)(2)(iii) and (b)]

Section 205.6—Liability of Consumer for Unauthorized Transfers

6-1 Q: *Unauthorized transfers—access device not involved.* If unauthorized transfers do not involve the use of an access device such as a debit card, may any liability be imposed on the consumer?

A: If the consumer fails to report an unauthorized electronic fund transfer within 60 days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability. (See questions 2-26 and 7-7.) [§ 205.6(a) and (b)]

6-2 Q: *Failure to disclose business days.* If a financial institution meets other conditions (including disclosure of liability) but fails to disclose its business days, can it hold the consumer liable for uanuthorized transfers involving a lost or stolen access device?

A: No, unless applicable state law or an agreement between the consumer and the financial institution sets a liability limit of $50 or less. [§ 205.6(a)(3)(iii)]

6-3 Q: *Means of identification—multiple users.* If more than one access device is issued to access a particular consumer account, must the financial institution provide a means to identify each separate user in order to impose liability for unauthorized transfers?

A: No. The financial institution may provide means to identify the separate users, but is not required to do so. [§ 205.6(a)(2)]

6-4 Q: *Means of identification—use of PIN.* Does the use of a personal identification number (PIN) or other alphabetical or numerical code satisfy the requirement of electronic or mechanical confirmation for identifying the consumer to whom an access device was issued?

A: Yes. [§ 205.6(a)(2)]

6-5 Q: *Application of liability provisions—examples.* What are some examples of when and how the following would apply: (1) The $500 liability limit provision, (2) both the $500 limit and the unlimited liability provisions, and (3) only the $50/unlimited liability provisions? [§ 205.6(b)(1), (2) and (3)]

A: *Situation 1—$500 Limit Applies*

Date and Event

June 1—C's card is stolen
June 2—$100 unauthorized transfer
June 3—C learns of theft
June 4—$25 unauthorized transfer
June 5—Close of 2 business days
June 7-8—$600 in unauthorized transfers that could have been prevented had notice been given by June 5
June 9—C notifies bank

Computation of C's liability:

Paragraph (b)(1) will apply to determine C's liability for any unauthorized transfers that occur before notice is given.

	C's liability
Amount of transfers before close of 2 business days: $125	[1] $50
Amount of transfers, after close of 2 business days and before notice to institution, that would not have occurred but for C's failure to notify within 2 business days: $600	[2] 450
C's total liability	500

[1] Maximum liability for this period.
[2] Because maximum liability is $500.

Situation 2—Both $500 and unlimited liability provisions apply

Date and Event

June 1—C's card is stolen
June 3—C learns of theft
June 5—Close of 2 business days
June 7—$200 unauthorized transfer that could have been prevented had notice been given by June 5
June 10—Periodic statement is transmitted to C (for period from 5/10 to 6/9)
June 15—$200 unauthorized transfer that could have been prevented had notice been given by June 5
July 10—Periodic statement of C's account is transmitted to C (for period from 6/10 to 7/9)
August 4—$300 unauthorized transfer that could have been prevented had notice been given by June 5
August 9—Close of 60 days after transmittal of statement showing unauthorized transfer

August 10—Periodic statement of C's account is transmitted to C (for period 7/10 to 8/9)

August 15—$100 unauthorized transfer that could have been prevented had notice been given by August 9

August 20—C notifies bank

Computation of C's liability:

Paragraph (b)(1) will apply to determine C's liability for unauthorized transfers that appear on the periodic statement and unauthorized transfers that occur before the close of the 60-day period. (The transfers need not both appear on the periodic statement *and* occur before the close of the 60-day period.) The maximum liability under (b)(1) is $500.

	C's liability
Amount of transfers before close of 2 business days: $0	$0
Amount of transfers, after close of 2 business days and before close of 60-day period, that would not have occurred but for C's failure to notify within 2 business days: $700	[1] 500

[1] Maximum liability.

Paragraph (b)(2)(ii) will apply to determine C's liability for transfers occurring after the close of the 60-day period. There is no dollar ceiling on liability under paragraph (b)(2)(ii).

Amount of transfers, after close of 60 days and before notice, that would not have occurred but for C's failure to notify within 60 days: $100	$100
C's total liability	600

Situation 3—$50/unlimited liability provisions apply

Facts same as in Situation 2, except that C does not learn of the card theft, but questions the account balance and notifies bank on August 20 of possible unauthorized transfers.

Computation of C's liability

In this situation only paragraph (b)(2) applies.

	C's liability
Amount of transfers appearing on the periodic statement or occurring during the 60-day period: $700	[1] $50
Amount of transfers, after close of 60-day period and before notice, that would not have occurred but for C's failure to notify within 60 days: $100	100
C's total liability	150

[1] Maximum liability for this period.

6-6 Q: *Knowledge of loss or theft of access device.* May a financial institution treat the consumer's receipt of a periodic statement that reflects unauthorized transfers as establishing that the consumer had knowledge of loss or theft of the access device?

A: Receipt of the periodic statement reflecting unauthorized transfers may be considered a factor in determining whether the consumer had knowledge of the loss or theft, but cannot be deemed to represent conclusive evidence that the consumer had such knowledge. [§ 205.6(b)]

6-6.5 Q: *Consumer negligence.* A consumer writes the PIN on the ATM card or on a piece of paper kept with the card—actions that may constitute negligence under state law. Do such actions affect the liability for unauthorized transfers that may be imposed on the consumer?

A: No. The extent of the consumer's liability is determined by the promptness in reporting loss or theft of an access device or unauthorized transfers appearing on a periodic statement. Negligence on the consumer's part cannot be taken into account to impose greater liability than is permissible under the act and Regulation E. (§ 205.6(b))

6-7 Q: *Notice of loss or theft.* The consumer gives notice at an address or telephone number other than that specified by the financial institution. Is the notice valid for purposes of limiting the consumer's liability?

A: Yes. The institution has received notice for purposes of limiting the consumer's liability if notice is given in a reasonable manner at some other address or telephone number of the institution. [§ 205.6(c)]

6-8 Q: *Notice of loss or theft—content of notice.* The regulation refers to the consumer's taking such steps as are reasonably necessary to provide the financial institution with the pertinent information about the loss or theft of an access device. If a consumer is unable to furnish the institution with an account number or card number when reporting a lost or stolen access device, has the consumer given adequate notice?

A: Yes. In instances where the consumer is unable to provide the number, the notice is still valid for purposes of limiting the consumer's liability if the notification otherwise sufficiently identifies the account in question. Such a situation could arise, for example, if the consumer's wallet is stolen and the consumer is away from home. [§ 205.6(c)]

6-9 Q: *Applicable liability provisions—cash advances from credit line.* A credit card that is also an access device is used to obtain unauthorized cash advances from a line of credit at an automated teller machine. Do the consumer liability provisions of Regulation E, or those of Regulation Z, apply?

A: Regulation Z applies. Since the unauthorized cash advances do not involve a consumer asset account, an electronic fund transfer has not occurred that would make the transaction subject to Regulation E. [§ 205.6(d)(2)]

6-10 Q: *Applicable liability provisions—checking account with overdraft feature.* If the unauthorized transfers in question 6-9 were instead withdrawals from a checking account, and they resulted in cash advances from an overdraft line of credit, which liability provisions apply?

A: Regulation E applies, because the transfer was an electronic fund transfer; there was an extension of credit only as a consequence of the overdraft protection feature on the checking account. [§ 205.6(d)(1)]

6-11 Q: *Applicable liability provisions—withdrawals from checking account/credit line.* If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from the checking account and, separately, to obtain cash advances directly from the line of credit, which liability provisions apply?

A: Both Regulation E and Regulation Z apply. Regulation E would apply to the unauthorized transfers involving the checking account, while Regulation Z would apply to the transfers involving the credit line. As a result, a consumer might be liable for up to $50 under Regulation Z and, in addition, for $50, $500 or an unlimited amount under Regulation E. [§ 205.6(d)]

Section 205.7—Initial Disclosure of Terms and Conditions

7-1 Q: *Timing of disclosure—early disclosure.* An institution is required to give initial disclosures either (1) when the consumer contracts for an EFT service or (2) before the first electronic fund transfer to or from the consumer's account. If an institution provides initial disclosures when a consumer opens a checking account, and the consumer does not sign up for an EFT service until 11 months later, has the institution satisfied the disclosure requirements?

A: Yes, if the EFT contract is between the consumer and a third party for preauthorized electronic transfers to be initiated by the third party to or from the consumer's account. In this case, the financial institution need not repeat disclosures previously given unless the terms and conditions required to be disclosed are different from those that were given.

If, on the other hand, the EFT contract is directly between the consumer and the financial institution—for the issuance of an access device, or for a telephone bill-payment plan, for example—the institution should provide the disclosures at the time of contracting. Disclosures given before the time of contracting will satisfy the regulation only if they occurred in close proximity thereto. [§ 205.7(a)]

7-2 Q: *Timing of disclosures—Social Security direct deposits.* In the case of Social Security direct deposits, the financial institution receives no prenotification. How can the institution comply with the disclosure requirements?

A: Before direct deposit of Social Security payments can occur, both the consumer and the institution must complete a Form 1199. The institution can make disclosures at that time. [§ 205.7(a)]

7-3 Q: *Form of disclosures.* Are there special rules for disclosure statements concerning such matters as type size, number of pages, or the relative conspicuousness of various terms?

A: No. The regulation imposes no requirements concerning matters of form, although it does specify that the disclosures must be given in a readily understandable written statement that the consumer may retain. [§ 205.7(a)]

7-4 Q: *Spanish language disclosures.* In Puerto Rico, where communications normally are in Spanish, may a financial institution provide the required disclosures in Spanish?

A: Yes, disclosures in Spanish will satisfy the readily understandable requirement, provided that disclosures in English are given to consumers who request them. [§ 205.7(a)]

7-5 Q: *Disclosures covering all EFT services offered.* Must the disclosure statement given to a consumer relate only to the particular EFT services that the consumer will receive?

A: An institution may provide a disclosure statement covering all the EFT services that the institution offers, even if some consumers receiving the disclosures have not arranged to use all the services. [§ 205.7(a)]

7-5.5 Q: *Addition of new accounts.* A consumer arranges for electronic fund transfers to and from an account, and receives disclosures. Later, the consumer arranges for transfers involving an additional account at the same financial institution. Does the addition of the new account require further disclosures?

A: The addition of a new account would require the institution to furnish any of the required disclosures that differ from those previously given. (See questions 5-1.5 and 7-6.) (§ 205.7(a))

7-6 Q: *Addition of new EFT services.* A consumer signs up for an EFT service and receives disclosures. If the consumer later arranges for other EFT services from the same institution, must additional disclosures be given?

A: Yes, if the new service is subject to terms and conditions different from those given in the initial disclosures. Only the disclosures for the additional service need be given. This is also the case if the institution begins to furnish a new service upon renewal of an access device. (See question 5-2.) [§ 205.7(a)]

7-6.5 Q: *Addition of service—in interchange system.* A financial institution operates electronic terminals through which consumers can access their accounts, and gives the required disclosures regarding the service. Later, the institution joins an interchange or shared system of terminals, giving consumers access to terminals operated by other institutions in the system. Are new disclosures required?

A: The institution must provide any of the required disclosures that differ from those previously given. (§ 205.7(a))

7-7 Q: *Disclosures about unauthorized transfers—preauthorized transfers.* If the only electronic fund transfers from an account are preauthorized transfers, must the institution make a liability disclosure regarding unauthorized transfers, and provide a telephone number and address for reporting possible unauthorized transfers?

A: Yes, unless the institution chooses not to impose any liability. The disclosure of liability should reflect that liability could exist if the consumer fails to report unauthorized transfers that are reflected on a periodic statement. (See question 6-1.) [§ 205.7(a) (1) and (2)]

7-8 Q: *Disclosures about unauthorized transfers—no liability imposed.* If an institution chooses not to impose any liability for unauthorized electronic fund transfers, must it make any liability disclosure?

A: No; the disclosure is inapplicable. If the institution later decides to impose liability, however, it must make the liability disclosure before it can do so. [§ 205.7(a) (1) and (2)]

7-9 Q: *Summary disclosure of rights.* Several required disclosures relate to a consumer's rights under the Act and regulation. Must the disclosures spell out these rights in full, as they are set forth in the Act and regulation?

A: No. These matters can be disclosed by means of summary descriptions. (For examples showing the amount of detail that needs to be provided, see the model disclosure clauses in Appendix A.) [§ 205.7(a) (1), (6), (7) and (8)]

7-10 Q: *Type of transfer—preauthorized transfers.* Must preauthorized transfers be disclosed as a type of electronic fund transfer that the consumer may make?

A: No. An institution need not list preauthorized transfers as one of the types of transfers that a consumer can make, although it is permissible to do so. [§ 205.7(a)(4)]

7-11 Q: *Limitations on transfers.* How much must the consumer be told about limitations on frequency and dollar amount of transfers?

A: The general rule is that information on these limitations must be disclosed in detail to consumers. This is so even if the limitations are related to the security aspects of the electronic fund transfer system. The regulation provides, however, that to the extent confidentiality of certain details is determined by the institution to be *essential* to the security of the account or the system, the details may be withheld—but the fact that there are limitations must be disclosed. [§ 205.7(a)(4)]

7-12 Q: *Disclosure of charges—same per-item charge for EFT/non-EFT.* The regulation requires disclosure of charges for electronic fund transfers or for the right to make transfers. If a per-transfer charge for electronic fund transfers is the same as the per-item charge for non-electronic transfers, must the EFT charge be disclosed?

A: Yes, such charges must be disclosed. If an institution does not wish to itemize the various charges on the disclosure statement, it may disclose them in an accompanying document given along with the principal disclosure statement. If an insert is used, the disclosure statement must refer to the accompanying document. [§ 205.7(a)(5)]

7-13 Q: *Disclosure of charges—charge imposed under certain conditions.* If an institution imposes per-item charges only under certain conditions (when the transactions for the cycle exceed a certain number, for example), must the institution disclose what those conditions are?

A: Yes. Again, this information may be provided in a separate document enclosed with and referenced by the EFT disclosures. [§ 205.7(a)(5)]

7-14 Q: *Disclosure of charges—fixed service charge.* If a fixed service charge is assessed only when the balance in the account falls below a certain minimum, must it be disclosed?

A: No, since there is no charge attributable to an EFT service. [§ 205.7(a)(5)]

7-15 Q: *Disclosure of charges—stop-payment/dishonor/overdraft.* Does the regulation require disclosure of charges for stop-payment orders, dishonor, or overdrafts?

A: No. These are not charges for electronic fund transfers or for the right to make such transfers. Disclosure is permissible, however. (See model disclosure clause A(9) in Appendix A.) [§ 205.7(a)(5)]

7-15.5 Q: *Charges—in interchange system.* Charges are imposed on the account-holding institution by the operator of a shared or interchange ATM system for the use of the system. In addition, charges may be imposed by other institutions in the system for the use of their ATMs. Must such charges be disclosed by the account-holding institution in the initial disclosures?

A: The fact that charges are imposed on the account-holding institution by the system or terminal-operating institution does not, by itself, require a disclosure to the consumer. However, the institution must disclose any charges it imposes on the consumer for EFT services, including charges for ATM transactions in an interchange or shared ATM system.

Charges for use of an ATM imposed on the consumer by an institution other than the account-holding institution are not within the purview of the account-holding institution's relationship with its customer and need not be disclosed in the initial disclosures. (See question 4-1.) (§§ 205.7(a)(5) and 205.4(a))

7-16 Q: *Disclosure about privacy of account information.* The regulation requires an institution to list the circumstances under which, in the ordinary course of business, it will disclose information to third parties about an account. If a consumer holds two accounts in an institution—account #1 has EFT service, but account #2 does not—does the requirement apply to both accounts?

A: The required disclosure relates only to account #1, which has an EFT service. However, the institution must describe the circumstances under which *any* information relating to that account (not just information concerning electronic fund transfers) will be made available to third parties. [§ 205.7(a)(9)]

7-17 Q: *Disclosure about privacy—meaning of third parties.* For purposes of this disclosure requirement, does the term third parties include other subsidiaries of the same holding company?

A: Yes. [§ 205.7(a)(9)]

7-18 Q: *Error resolution disclosure.* The regulation contains an error resolution notice. Is this notice a model disclosure clause that the institution may use at its option?

A: The error resolution notice is a required disclosure and must be given in a form substantially similar to that appearing in the regulation. An institution may, however, delete inapplicable provisions (e.g., the requirement of written confirmation of an oral notification); substitute trade names; substitute substantive state law requirements that afford greater consumer protection than the regulation; or even use different wording—so long as the substance of the notice remains substantially the same. [§ 205.7(a)(10)]

7-18.5 Q: *Error-resolution disclosure—extended time periods.* The regulation expands the time periods for resolving errors that involve transfers initiated outside the United States or transfers resulting from POS debit card transactions, from 10 to 20 business days and from 45 to 90 calendar days. Must the error-resolution disclosure reflect the longer time periods with respect to accounts on which these types of transfers can be made?

A: A financial institution's error-resolution disclosures must reflect its actual procedures. An institution that takes advantage of the longer time periods applicable to POS and foreign-initiated transfers must therefore disclose the longer periods in its error-resolution disclosures. Similarly, an institution that relies on the exception from provisional recrediting (for accounts subject to Regulation T) must phrase its disclosures accordingly. (§§ 205.7(a)(10)), 205.8(b), and 205.11 (c)(3) and (c)(4)).

7-19 Q: *Disclosures involving telephone numbers.* Several disclosures involve telephone numbers: numbers for reporting loss or theft of an access device or possible unauthorized transfers, for inquiring about receipt of a preauthorized credit, for stopping payment of a preauthorized debit, and for giving notice of error. May an institution use a single telephone number for all these purposes?

A: Yes. Conversely, an institution could use different telephone numbers for one or more of these purposes. [§ 205.7(a) (2), (6), (7), and (10)]

7-20 Q: *Disclosures involving telephone numbers.* Must the telephone number (or list of numbers) referred to in question 7-19 be incorporated into the text of the disclosure to which it relates?

A: No. The institution may instead insert a reference to a telephone number that is readily available to the consumer (for example: "call your branch office—the number is shown on your periodic statement"), except for the telephone number to be used for reporting a lost or stolen access device. In the latter case, the institution must disclose a specific telephone number on or with the disclosure statement. [§ 205.7(a) (2), (6), (7) and (10)]

Section 205.8—Change in Terms; Error Resolution Notice

8-1 Q: *Terms requiring change-in-terms notice.* What categories of initial disclosures are subject to the change-in-terms notice requirement?

A: Examples of changes that must be disclosed are: an increase in the consumer's liability for unauthorized electronic fund transfers; a decrease in available types of electronic fund transfers; an increased strictness in limitations on frequency or dollar amount of transfers (with certain exceptions; see question 8-4); an increase in charges for electronic fund transfers or the right to make transfers, or the imposition of such charges for the first time. [§ 205.8(a)]

8-2 Q: *Change in telephone number or address.* Is an institution required to disclose a change in the telephone number or address for reporting possible unauthorized transfers?

A: No, but it must do so if it wishes to impose any liability on the consumer for such transfers. [§§ 205.8(a), 205.6(a)(3)]

8-3 Q: *Closing down of ATMs.* If an institution closes down some of its automated teller machines, must it disclose this change?

A: No; such a change does not relate to an item required to be given in the initial disclosures. [§§ 205.8(a), 205.7(a)]

8-4 Q: *Changes in limitations on transfers.* An institution limits the amount of money that consumers can withdraw daily from its ATMs. Because secrecy of the limits is essential to maintaining the security of the accounts or the system against theft, the details of the limits were not stated in the initial disclosures. The institution disclosed only that certain limits exist. If the limits are now made stricter, what must the institution disclose to its customers?

A: No disclosure is required, provided secrecy is still essential. In contrast, if the institution had no dollar limits when it made the initial disclosures, and is now imposing limits for the first time, it must disclose at least the fact that limits have been adopted. [§§ 205.8(a), 205.7(a)(4)]

8-5 Q: *Termination of EFT service.* If an institution terminates a consumer's ATM or POS service by cancelling the access device, must it provide a disclosure?

A: No. But if the service involves credit (because the device is a combined credit card/access device, for example), notification under § 202.9(a) of Regulation B (Equal Credit Opportunity) may be required. If a credit report was involved in the decision to cancel the combined card, notification under section 615(a) of the Fair Credit Reporting Act also may be required. [§ 205.8(a)]

8-6 Q: *Form of change-in-terms notice.* May an institution give notice of a change in terms by sending copies of its revised disclosure statement?

A: Yes, provided attention is directed to the change (for example, in a cover letter referencing the changed term). No specific form or wording is required. The notice may appear on a periodic statement. [§ 205.8(a)]

8-7 Q: *Error resolution notice—no periodic statements sent.* An institution must either provide its customers with the full error resolution notice annually, or include a short-form notice on or with each periodic statement. If an institution does not send periodic statements to certain EFT customers, how should it comply with this requirement?

A: It must send the full error resolution notice annually. [§ 205.8(b)]

8-8 Q: *Error resolution notice—changeover from one form to other.* An institution sends annual long-form error resolution notices. If it wishes to adopt the short-form alternative, when must the first short-form notice be sent?

A: No later than 12 months after the last long-form notice was sent. Conversely, if an institution wants to switch to the long form, the first long-form notice should be sent no later than 12 months after the last short-form notice. [§ 205.8(b)]

Section 205.9—Documentation of Transfers

NOTE: Some questions in this section relate to both the receipt and the periodic statement requirements of § 205.9 (a) and (b). These are identified by a *Receipts/periodic statements* catchline and appear together following the questions that deal solely with § 205.9(a) or § 205.9(b).

9-1 Q: *Receipts—furnished only on request.* An institution's electronic terminals are programmed to provide a receipt only if the consumer elects to receive one by pressing a key at the time of the transfer. Does this comply with the regulation?

A: Yes; the regulation merely requires that a receipt be made available to the consumer at the time of the transfer. (There is a limited exception to the receipt requirement under § 205.9(*f*) for certain cash-dispensing machines, but only if the machines were purchased or ordered before February 6, 1980.) [§ 205.9(a)]

9-2 Q: *Receipts—available through third parties.* What is the purpose of the footnote in the regulation that permits financial institutions to make terminal receipts available through third parties?

A: It permits institutions to arrange for operators of terminals in an EFT system (merchants or other financial institutions, for example) to make the receipt available. However, the financial institution holding the consumer's account or providing the EFT service to the consumer remains responsible for the availability of the receipt. [§ 205.9(a), footnote 2]

9-3 Q: *Receipts—information displayed on screen.* Does a financial institution comply with the receipt requirement if it simply prints the receipt information on a display screen?

A: No. The receipt must be in a written form that the consumer can retain. [§ 205.9(a)]

9-4 Q: *Receipts—form.* Are there special rules regarding type size, length of receipt, and so forth?

A: No. The regulation does require, however, that the information on the receipt be set forth clearly. A series of unlabelled numbers or codes for various types of information, if not readily understandable on their face, would not be clearly set forth within the meaning of the regulation. The institution may document individual transfers on separate receipts, even though the consumer makes multiple transfers at the same time, or it may document them on a single receipt. [§ 205.9(a)]

9-5 Q: *Receipts—transfer not completed.* Does the terminal receipt requirement apply if a transfer is initiated but not completed (because the ATM is out of currency, for example)?

A: No; however, most terminals generate a receipt even if a transfer is not completed because of a terminal malfunction or because the consumer decided not to complete the transfer. [§ 205.9(a)]

9-6 Q: *Receipts—not furnished; inadvertent error.* Does a violation result if a terminal runs out of paper and a receipt is not made available to the consumer?

A: No, so long as it is a bona fide unintentional error and the financial institution maintains procedures reasonably adapted to avoid such an error. [§ 205.9(a), section 915(c)]

9-7 Q: *Receipts—date.* May a financial institution disclose an accounting or business date on the terminal receipt?

A: The calendar date on which the consumer uses the electronic terminal must be disclosed; an accounting or business date may be disclosed in addition, so long as the dates are clearly distinguished. If a transfer is initiated late one day and completed on the next day, the financial institution may disclose either calendar date on the receipt. [§ 205.9(a)(2)]

9-8 Q: *Receipts—access to multiple accounts of same type.* How should the type of account be disclosed on the terminal receipt when more than one account of the same type can be accessed by the consumer's access device?

A: Some examples: If an access device can be used by the consumer to make transfers to or from two checking accounts, the terminal receipt must specify which of the two has been accessed; a financial institution could disclose a cash withdrawal as "withdrawal from checking I" or "withdrawal from checking II." If only one account besides the primary checking account can be debited by the access device, it could be identified as "withdrawal from other account." The number of the account being accessed could be used both to identify the type of account and to serve as the unique identifier of the account. [§ 205.9(a) (3) and (4)]

9-9 Q: *Receipts—type of account.* A footnote states that the type of account need not be identified if the access device used to initiate the transfer can access only one account at a given terminal. When does this exception apply?

A: The exception applies to point-of-sale terminals, ATMs, and any other electronic terminals. It is available even if the access device can access more than one account when used at another terminal. For example, it is available when, in a shared ATM system, an access device can access only one account at a terminal operated by an institution other than the account-holding institution, even though the access device can access more than one account at terminals operated by the account-holding institution. Moreover, account refers only to asset accounts. If a consumer can use an access device at a terminal to debit an asset account and also to access a credit line, for example, the exception is still available. [§ 205.9(a)(3), footnote 3]

9-10 Q: *Receipts—type of account, off-line ATMs.* A financial institution's ATMs permit access to multiple accounts of the same type when the ATM is on-line, and receipts uniquely identify the accounts by use of account numbers. When the ATM is off-line, however, access is permitted only to a primary account designated by the consumer in advance. The consumer is informed at the ATM that only the primary account can be accessed at that time. May the receipt describe the transfer as a "withdrawal from checking," for example, without a unique identification of the account?

A: Yes. Because the consumer can access only the primary account at the time of the off-line transfer, unique identification of the account is not required. [§ 205.9(a)(3), footnote 3]

9-10.5 Q: *Receipts—type of account, interchange system.* What about an interchange system in which consumers can access multiple accounts of the same type at their account holding institution's terminals, but only a primary account of each type of other terminals in the system—may the receipt at such other terminals describe the account in terms of "checking" or "savings," without unique identification?

A: Yes. [§ 205.9(a)(3), footnote 3]

9-11 Q: *Receipts—unique identifier.* Does the financial institution have flexibility in providing a number or code that uniquely identifies the consumer, the consumer's account, or the access device used to initiate a transfer?

A: Yes. Any unique identification that will link the consumer to the particular transfer is sufficient to comply with this requirement. [§ 205.9(a)(4)]

9-12 Q: *Receipts—terminal location.* A financial institution wants to disclose the location of the terminal on the terminal receipt by giving a description in one of the three forms prescribed in the regulation. How may it satisfy the requirement?

A: The institution may, for example, preprint the terminal locations on its receipts. An institution that owns or operates terminals at only one location may use its name (such as "First Nat'l"). An institution with terminals in several locations must use a street address or a generally accepted name for a specific location. [§ 205.9 (a)(5), and (b)(1)(iv)]

9-13 Q: *Receipts—omission of third-party name.* Under what circumstances may the name of a third party (to or from whom funds are transferred) be omitted from the terminal receipt?

A: The name may be omitted if the consumer provides the name in a form that the electronic terminal cannot duplicate on the receipt. For example, if a consumer initiates a utility payment at an ATM and provides the name of the payee by inserting a payment stub into the ATM, the terminal receipt need not name the utility company. (The name would have to appear on the periodic statement, of course.)

On the other hand, if the consumer keys in the identity of the payee (by means of a code number, for example) the receipt must name the payee, or use a code that is explained elsewhere on the receipt. The institution may, for example, preprint a series of codes and the specific payees to which they relate on the form—and print the correct code at the time of the transfer. [§ 205.9(a)(6)]

(The regulation does not apply to bill payments made at an ATM by check or currency. See question 2-10.)

9-14 Q: *Receipts—deposit receipt as proof of payment.* Section 906(f) of the act provides that required documentation constitutes prima facie proof of payment to another person; does this provision apply to a terminal receipt documenting a deposit?

A: No, because there is no payment to another person. [§ 205.9(a)(6)]

9-15 Q: *Periodic statements—when required.* The regulation requires periodic statements to be sent for any account to or from which electronic fund transfers can be made. What does this mean?

A: The requirement applies only to those accounts for which an agreement has been entered into: (1) Between the consumer and the financial institution for EFT services to or from the account (including accounts for which an access device has been issued to the consumer); or (2) between the consumer and a third party (for preauthorized debits or credits, for example), when the institution has received notice of the agreement and the fund transfers have begun. (Passbook and statement accounts should be judged by these same criteria in determining whether the account is subject to documentation requirements under the regulation.)

If there is no specific agreement for EFT services, the periodic statement and other requirements of the regulations do not apply to the account. The fact that membership in an ACH requires a participating financial institution to accept electronic fund transfers to accounts at the institution does not make every account of that institution subject to the regulation. [§ 205.9 (b), (c), and (d)]

9-16 Q: *Periodic statements—frequency.* How often must periodic statements be sent for accounts that are subject to the regulation?

A: A monthly statement is required for any account to or from which an EFT has occurred during the month, if the account is one that can be debited electronically (by use of an access device, telephone bill-payment service, or preauthorized transfers from the consumer's account, for example) or if the account can be credited electronically by other than preauthorized deposits. If no transfers occur during some months, the statement must be provided at least quarterly.

There are certain exceptions for accounts on which the only EFT service relates to preauthorized credits. The institution may send quarterly statements or, if the account is a passbook account, the institution may simply update the passbook when it is presented for updating (with the amount and date of each EFT since the last update).

Also, to eliminate duplicative statements, the regulation provides an exception from the periodic statement requirement for certain intra-institutional transfers between a consumer's accounts. This exception does not alter the statement provisions, however, with respect to accounts that receive preauthorized credits; such accounts continue to acquire quarterly statements or passbook updates. [§ 205.9(b), (c), (d), and (h)]

9-17 Q: *Periodic statements—inactive accounts.* Must quarterly statements be sent to all accounts that have had an EFT service associated with them, even though the accounts are considered inactive by the financial institution?

A: An institution need not send statements to accounts it considers inactive. The determination that certain accounts are inactive must be made by the institution. [§ 205.9 (b) and (d)]

9-18 Q: *Periodic statements—customer pick-up.* May a financial institution permit consumers to call for their periodic statements?

A: Yes, but the institution may not require it. [§ 205.9 (b) and (d)]

9-19 Q: *Periodic statements—periodic cycles.* May financial institutions send out a periodic statement each time an electronic fund transfer occurs?

A: No. Although statements may be sent on a cycle that is shorter than monthly, the statements must correspond to an actual periodic cycle. [§ 205.9(b)]

9-20 Q: *Periodic statements—variance in cycle.* Must a cycle for a periodic statement be exactly a month, quarter, or other regular period?

A. No. Cycles will be considered equal if the number of days in the cycle does not vary by more than 4 days from the regular day or date of the periodic statement. It is also permissible to stagger the statement cycle for different accounts for operational or other reasons. [§ 205.9 (b) and (d)]

9-21 Q: *Periodic statements—summary limited to EFT activity.* Certain consumer passbook accounts can be debited electronically and thus do not qualify for the exception from the periodic statement requirement. The financial institution continues to use the passbook as the primary means for displaying all transfers (electronic and nonelectronic) on the account. May the institution comply with the regulation by providing a summary periodic statement covering only the electronic activity?

A: Yes. Other required disclosures (such as charges, account balances, and address and telephone number for inquiries) must, of course, also be included. [§ 205.9(b)]

9-22 Q: [Reserved]

9-23 Q: *Periodic statements—accompanying documents.* A footnote in the regulation permits details about each transfer to be given on documents accompanying the periodic statement; it also permits codes to be used, so long as they are explained on the statement or accompanying documents. How can a financial institution take advantage of this provision?

A: This provision gives financial institutions that do not use descriptive statements an alternative means for meeting the documentation requirements. Some examples: An institution could include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals. It could enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information. It could use codes (for names of third parties, terminal locations, etc.) and explain the information to which they relate on an accompanying document. [§ 205.9(b)(1), footnote 4]

9-24 Q: *Periodic statements—accompanying documents.* May required information other than information about each electronic transfer appear on accompanying documents?

A: Yes. The regulation imposes no page requirements for periodic statements; thus, the required information need not all appear on a single page. (See question 9-34.) [§ 205.9(b)]

9-25 Q: *Periodic statements—information obtained from others.* For purposes of periodic statement disclosures, may a financial institution unconditionally rely on data transmitted to it by another financial institution or other party (such as a merchant)?

A: Independent verification of the data for each transfer is not required. Financial institutions must, however, generally maintain reasonable procedures to avoid violations of the regulation, whether as a result of faulty data transmission or errors of third parties. (See the exception to liability under section 915 of the Act for bona fide unintentional errors.) [§ 205.9(b)(1)]

9-26 Q: *Periodic statements—terminal location omitted.* When a consumer makes a deposit at an ATM, the institution need not identify the ATM location on the periodic statement. Does the consumer's request for the terminal location (or any other information about the deposit) trigger the error resolution procedures under the regulation?

A: Yes, if the request for the location is made in accordance with the requirements of the error resolution section. However, in responding the institution need only provide the consumer with the ATM location if it has captured that information with regard to deposits. If the consumer merely calls to ascertain whether or not a deposit (ATM, preauthorized, or any other type of electronic transfer) was credited to the account, the error resolution procedures do not apply. [§§ 205.9(b)(1)(iv), footnote 4a, and 205.11(a)(7)]

9-27 Q: *Periodic statements—type of POS transfer.* How should the periodic statement identify a transfer that takes place at a merchant's POS terminal—as a purchase or sale of goods or services, or as a payment to a third party?

A: There is no prescribed terminology. [§ 205.9(b)(1)(iii)]

9-28 Q: *Periodic statements—transferor/Federal recurring payments.* How should the name of the third party be disclosed on the periodic statement for Federal recurring payments?

A: For any Federal recurring payment (such as Social Security, military or civil service pensions/payrolls) the third-party name may be disclosed as "U.S. gov't," "fed sal," or any other designation indicating that the payor is the United States government. [§ 205.9(b)(1)(v) and (e)]

9-29 Q: *Periodic statements—multiple transferees.* A financial institution permits consumers to make multiple payments at an ATM by keying in a composite dollar amount and inserting payment stubs into the ATM to indicate who the individual payees are. If a consumer keys in an amount and directs the institution to pay three utility bills from that sum, must the three companies be named on the periodic statement?

A: Yes. The names of all three utilities must be provided on the periodic statement so that the documentation can serve as proof of payment for the consumer. [§ 205.9(b)(1)(v)]

9-30 Q: *Periodic statements—consumer as third-party payee.* If a consumer makes an electronic fund transfer to another consumer, may the financial institution identify the recipient on the periodic statement by giving the person's account number?

A: No. The institution must disclose the recipient by name. [§ 205.9(b)(1)(v)]

9-31 Q: *Periodic statements—charges.* What charges must be disclosed on the periodic statement?

A: Financial institutions should disclose the charges assessed against the account during the statement period for electronic fund transfers or the right to make transfers, or for account maintenance (including both EFT and non-EFT and both fixed fees and per-item charges). The charges may be disclosed as a total or may be itemized in part or in full, at the institution's option. (§ 205.9(b)(3))

9-31.5 Q: *Periodic statements—charges in interchange system.* Charges are imposed on the account-holding institution by the operator of a shared or interchange ATM system for the use of the system. In addition, charges may be imposed by other institutions in the system for the use of their ATMs. Must such charges be disclosed by the account-holding institution on the periodic statement?

A: The fact that charges are imposed on the account-holding institution by the system or terminal-operating institution does not, by itself, require a disclosure to the consumer. However, the institution must disclose any charges it imposes on the consumer for EFT services, including charges for ATM transactions in an interchange or shared ATM system.

Charges for use of an ATM imposed on the consumer by an institution other than the account-holding institution and included in the amount of the transfer by the terminal-operating institution need not be separately disclosed on the periodic statement. (§ 205.9 (a)(1), (b)(1)(i), and (b)(3))

9-32 Q: *Periodic statements—opening and closing balances.* The financial institution is required to disclose an opening and a closing balance in the consumer's account. May these balances be based solely on the electronic activity?

A: No. The balances must take into account both electronic and non-electronic activity. [§ 205.9(b)(4)]

9-33 Q: *Periodic statements—telephone numbers.* A financial institution is required to disclose a telephone number for error resolution and (if it is using the telephone alternative for preauthorized credits) a number for the consumer to call to ascertain whether a preauthorized credit has occurred. Would disclosure of a single telephone number for both purposes, preceded by the "direct inquiries to" language, satisfy both requirements?

A: Yes. [§ 205.9(b)(5) and (6)]

9-34 Q: *Periodic statements—telephone numbers.* May the institution disclose the telephone number for inquiring about preauthorized transfers to the consumer's account on a credit advice or other document enclosed with the periodic statement?

A: Yes. (See question 9-24.) [§ 205.9(b)(6)]

9-35 Q: *Receipts/periodic statements—incorrect deposit amount.* What does the regulation require if the amount of a deposit, as verified by the institution, turns out to be different from the amount entered by the consumer into the terminal?

A: An institution need not notify the consumer about the discrepancy per se. The next periodic statement should reflect the proper amount of the deposit or, depending on the institution's bookkeeping system, a correction of the erroneous amount. The institution must of course comply with the error resolution procedures if the consumer alleges an error in the deposit. [§ 205.9(a)(1) and (b)(1)(i)]

9-36 Q: *Receipts/periodic statements—type of transfer.* What degree of specificity is required on terminal receipts and periodic statements for the type of transfer?

A: Common descriptions are sufficient. There is no prescribed terminology, although some examples are contained in the regulation. On periodic statements, for example, it is enough simply to show the amount of the transfer in the debit or the credit column if other information on the statement (such as a terminal location or third-party name) enables the consumer to identify the type of transfer. As a further example, when a consumer obtains cash from a merchant in addition to purchasing goods, it is not necessary to treat the transaction as involving two different types of transfers. (§ 205.9 (a)(3) and (b)(1)(iii))

9-37 Q: *Receipts/periodic statements—type of account; generic descriptions.* The regulation permits a withdrawal from a consumer's share draft account at a credit union to be identified as a "withdrawal from checking." What is this provision intended to accomplish?

A: The regulation permits generic descriptions of the type of account to facilitate operations in a shared EFT network. For example, in a shared system, a credit union member may be able to initiate transfers to or from a share draft account at a terminal owned or operated by a bank, which may describe accounts only as "checking" or "savings" accounts (and be unable to generate a receipt describing the transfers as to or from a "share draft" account). [§ 205.9 (a)(3) and (b)(1)(iii)]

9-38 Q: *Receipts/periodic statements—location code.* May a transaction code be used to comply with the terminal location requirement?

A: Yes, if the transaction code (or the portion that relates to the terminal location) is clearly set forth on the receipt. It must, of course, be reproduced on the periodic statement. [§ 205.9 (a)(5) and (b)(1)(iv)]

9-39 Q: *Receipts/periodic statements—shared system; unique codes.* In a shared or interchange environment, must the various codes used on terminal receipts and periodic statements be unique?

A: In shared or interchange systems, identical numbers may well appear on the consumer's periodic statement for terminals operated by different institutions or merchants; this is permissible. [§ 205.9 (a) and (b)]

9-40 Q: *Receipts/periodic statements—omission of city name.* In disclosing the terminal location on a terminal receipt and on the periodic statement, a financial institution uses a generally accepted name (such as a branch name) for a specific location. May the city be omitted when the branch name and the city are the same?

A: Yes. [§ 205.9 (a)(5) and (b)(1)(iv)]

9-40.5 Q: *Receipts/periodic statements—interchange system; terminal location.* In a shared or interchange system, a consumer uses terminals operated by institutions other than the account-holding institution. The terminal operators have terminals at more than one location, and the terminal receipts include a street address, city, and state in addition to the name of the terminal operator. In contrast, the periodic statement provided by the account-holding institution identifies the terminal location for these transfers by listing the name of the terminal operator and the city and state. Does this identification comply with the regulation?

A: Yes. For transfers initiated at non-proprietary terminals, the account-holding institution may describe the location on the periodic statement by naming the entity at whose place of business the terminal is located (or which owns or operates the terminal), plus the city and state. It need not repeat on the periodic statement the street address given on the terminal receipt; similarly, it need not include identification codes or terminal numbers shown on the receipt by the terminal operator. (§ 205.9 (a)(5) and (b)(1)(iv))

9-41 Q: *Receipts/periodic statements—terminal location/third party.* May a single listing be used to identify both the terminal location and the name of the third party to or from whom funds are transferred?

A: Yes. For example, if a consumer purchases goods from a merchant, the name of the party to whom funds are transferred (the merchant) and the location of the terminal where the transfer is initiated will be satisfied by a disclosure such as "XYZ Store, Anytown, Ohio." [§ 205.9 (a) (5) and (6), and (b)(1) (iv) and (v)]

9-42 Q: *Receipts/periodic statements—intermediate party.* If a party (a merchant or another financial institution, for example) processes an electronic fund transfer but is not the ultimate transferee or transferor, must it be identified on terminal receipts or periodic statements?

A: No. Such parties need not be named either on the receipt or on the periodic statement. [§ 205.9 (a)(6) and (b)(1)(v)]

9-43 Q: *Receipts/periodic statements—account-holding institution as third party.* The regulation requires identification of the third party to or from whom a transfer is made, on the terminal receipt and periodic statement. Is an account-holding financial institution considered a third party for purposes of this requirement?

A: Yes. A third party is generally someone other than the consumer and the financial institution. However, section 906(f) of the act requires that any documentation provided to the consumer shall constitute prima facie proof of a transfer to another person, and applies to documentation of payments made to the account-holding institution.

The institution need not be named on the receipt and periodic statement as the payee if the fact that payment was made to the institution is sufficiently indicated by other information (for example, "loan payment from checking," if this can be taken to mean that the payment was to the account-holding institution). [§ 205.9 (a)(6) and (b)(1)(v)]

9-44 Q: *Receipts/periodic statements—consistency in third-party identity.* May a financial institution disclose, on the periodic statement, a third-party name other than the one that appeared on the receipt?

A: No. If the d.b.a. (doing business as) name of the third party appeared on a terminal receipt, that name must also appear on the periodic statement. Similarly, if a parent corporation's name appeared on the terminal receipt, it must also be used on the periodic statement. [§ 205.9 (a)(6) and (b)(1)(v)]

9-45 Q: *Passbook updates—when required.* Is a financial institution required to update a passbook every time the consumer presents it (for example, when the consumer uses the passbook to make a deposit or withdrawal)?

A: No. The institution need only update the passbook (by entering the amount and date of preauthorized credits since the preceding update) when the consumer presents it for updating. [§ 205.9(c)]

9-46 Q: *Passbook accounts—telephone notice alternative.* May an institution utilize the telephone notice alternative for passbook accounts that do not receive periodic statements?

A: Yes. (See question 10-12.) [§§ 205.9(c), 205.10(a)(1)(iii)]

9-47 Q: *Passbook updates—discarding of data.* May a financial institution set a cutoff period for retention of information awaiting entry in the consumer's passbook?

A: No. However, the financial institution need not update a passbook immediately upon presentation if the information is not readily available. It may retain the passbook, add the information, and return the updated passbook promptly to the consumer. Or, it can mail separate documentation to the consumer. [§ 205.9(c)]

9-48 Q: *Passbook updates—periodic transmittals.* May a financial institution, in lieu of retaining the information between presentations of the passbook, send a consumer updates of preauthorized credits on a periodic basis?

A: Yes. [§ 205.9(c)]

9-49 Q: *Quarterly statements—compliance with regular requirements.* The regulation requires quarterly periodic statements for non-passbook accounts that cannot be accessed electronically except by preauthorized credits. Must these statements meet the periodic statement requirements of the regulation?

A: Yes. The statements must comply with all requirements for periodic statements. The only difference is that they may be sent quarterly. [§ 205.9(d)]

9-50 Q: *Periodic statements—transfers between accounts.* The regulation provides that an account is excepted from the periodic statement requirements for transfers to or from another account of the consumer within the institution, if these transfers are described on a complying statement for the other account. What effect does this have on the periodic statement requirements for accounts that also are accessed by other electronic transfer activity?

A: The exception applies only to the transfers between accounts. The financial institution must comply with the applicable periodic statement requirements for any other electronic transfers to or from the account. For example, a quarterly Regulation E statement must be sent for an account that also receives payroll deposits electronically; and a Regulation E statement must be sent for any month in which an account is also accessed by a withdrawal at an ATM. However, a financial institution need not comply with the Regulation E requirements on such statements for transfers that are otherwise exempt, such as the transfers between accounts discussed above. [§§ 205.9(c), (d), and (h)]

9-51 Q: *Periodic statements—foreign-initiated transfers.* Failure to provide terminal receipts and periodic statements for transfers initiated outside the United States is deemed not to be a failure to comply with the regulation if an inquiry or request for documentation is treated as a notice of an error. What does this mean?

A: The relaxation in documentation requirements takes account of the fact that some foreign-based terminals do not caputure all of the information required by the regulation. However, it is expected that the institution would make a good faith attempt to provide on the periodic statements the information required by the regulation to identify the transfer. For example, even though the institution may not be able to provide the location of the specific terminal, it should, if possible, identify the country and city in which the transfer was initiated. [§ 205.9(i)]

Section 205.10—Preauthorized Transfers

10-1 Q: *Notice of credit—choice of type.* Must consumers be given a choice of the type of notice to be provided regarding receipt of preauthorized credits?

A: No. It is up to the financial institution to decide which method of notice the institution wants to use. The institution may use different methods for different types or series of preauthorized transfers. [§ 205.10(a)(1)]

10-2 Q: *Notice of credit—when receipt guaranteed.* A financial institution guarantees its customers that scheduled Social Security transfers will be credited to their accounts whether or not the institution actually receives the funds on time. Does the notice requirement apply?

A: Yes—unless the institution has adopted the negative notice option, in which case sending the notice might confuse the consumer. [§ 205.10(a)(1)]

10-3 Q: *Notice provided by payor.* Are there instances in which the financial institution does not have to provide notice?

A: Yes. If the payor provides notice to the consumer that a transfer has been initiated, the financial institution is not required to provide notice of receipt. [§ 205.10(a)(1)]

10-4 Q: *Notice provided by payor—form.* If the payor-employer provides notice to a consumer that a transfer has been initiated, what type of notice must it give?

A: There is no required form or terminology. A pay stub that shows the net deposit is sufficient. [§ 205.10(a)(1)]

10-5 Q: *Content of notice.* Is there suggested language for the notice regarding receipt of a preauthorized transfer?

A: No. Identification of the deposit is sufficient. [§ 205.10(a)(1)]

10-6 Q: *Current account balance.* May an institution give notice by informing the consumer of the current balance in the account?

A: Such a notice will not satisfy the notice requirement. [§ 205.10(a)(1)]

10-7 Q: *Periodic statement as notice.* If a periodic statement sent within two business days reflects the transfer, can it serve as positive notice of receipt?

A: Yes. Similarly, the absence of the deposit entry (on a periodic statement sent within 2 business days of the scheduled transfer date) will serve as negative notice. [§ 205.10(a)(1)]

10-8 Q: *Negative notice—timing.* If an institution uses a negative notice system and a preauthorized credit fails to arrive on the scheduled date, but does arrive within two business days, must a notice be sent?

A: No. If the deposit did not arrive by the close of the second business day, however, a notice would have to be sent at that time. [§ 205.10(a)(1)(ii)]

10-9 Q: *Negative notice—cessation of transfers.* An institution uses a negative notice system. If preauthorized transfers to a consumer's account cease to occur, must the institution send notices of nonreceipt indefinitely?

A: No. In the absence of information from the consumer or the payor that the transfers have been terminated, the institution should send the notices at least 3 times. Or, it may notify the consumer that the institution believes the transfers have stopped, and that therefore no further negative notices will be sent [§ 205.10(a)(1)(ii)]

10-10 Q: *Telephone notice—timing.* How quickly must a financial institution respond to a consumer's telephone inquiry about whether a preauthorized transfer has been received?

A: In most instances, an institution should be able to provide verification during the same telephone call. However, if the information is not immediately available—because of a time lapse between the scheduled transfer date and the consumer's call, for example—the institution should respond within 2 business days. [§ 205.10(a)(1)(iii)]

10-11 Q: *Telephone notice—availability.* The regulation requires that the telephone line for inquiries about preauthorized credits be readily available. What does this mean? Also, must the institution provide a toll-free number, or accept collect calls?

A: To satisfy the readily available standard, the financial institution should provide enough lines so that consumers get a reasonably prompt answer, using any answering system it wants.

As to toll-free calls, an institution should provide—within its primary service area—a telephone number to which calls can be made without charge to the customer. In some cases, a financial institution will have customers who reside away from the city or state where the financial institution normally conducts business; the financial institution need not provide a toll-free number or accept collect long-distance calls from these customers.

The financial institution need not provide 24-hour telephone lines to respond to consumers' inquiries. Telephone service during normal business hours will suffice. [§ 205.10(a)(1)(iii)]

10-12 Q: *Telephone notice—passbook accounts.* An institution that uses the telephone alternative for preauthorized credits is required to give the telephone number in the initial disclosures and on each periodic statement. Customers whose passbook accounts can only be accessed by preauthorized credits do not receive periodic statements. How might the financial institution comply with the second condition?

A: The institution may take any reasonable measure to provide the number to consumers. It may stamp the telephone number in the passbook, for example, or include the telephone number with the annual error resolution notice. [§ 205.10(a)(1)(iii)]

10-13 Q: *Preauthorized credits—availability of funds.* When must funds deposited to an account via preauthorized transfers be available to the consumer?

A: The regulation requires that preauthorized transfers be credited as of the day the funds for the transfer are received. The determination of when these funds are available to the consumer for withdrawal will depend on applicable state law, if any, and on other federal regulations, if any. [§ 205.10(a)(2)]

10-14 Q: *Preauthorized credits—posting schedule.* If a financial institution normally posts credits to customers' accounts in the morning, and it receives an ACH tape in the afternoon, may the institution delay the posting until the next morning?

A: Yes. An institution need not alter its established posting schedule. However, the funds must be credited to the consumers' accounts as of the date the funds are received. [§ 205.10(a)(2)]

10-15 Q: *Preauthorized credits—funds received prior to agreed crediting date.* Is a financial institution ever permitted to credit a consumer's account later than the date the funds are received from the payor?

A: Yes. If the financial institution and the payor have agreed that the payor will transmit funds to the institution in advance of the date on which the institution is to credit consumers' accounts (for example, two days in advance of pay day), the institution may credit the accounts as of the date agreed upon with the payor (that is, pay day) [§ 205.10(a)(2)]

10-16 Q: *Preauthorized debits—pre-existing authorizations.* If an agreement for preauthorized electronic fund transfers from an account was entered into before May 10, 1980, must a new authorization be obtained by the designated payee or by the financial institution?

A: No. [§ 205.10(b)]

10-17 Q: *Preauthorized debits—pre-existing authorizations.* If a consumer's existing authorization, which authorizes the institution or the designated payee to debit the consumer's account, does not specify that the debiting is to occur electronically (or specifies that debiting is to occur by paper means), must a new authorization be obtained in order to debit the account electronically?

A: The regulation does not require that new authorizations be obtained. [§ 205.10(b)]

10-18 Q: *Preauthorized debits—authorization obtained by third party.* If a consumer authorizes a third party (for example, an insurance company) to initiate preauthorized electronic fund transfers from the consumer's account, and the third party fails to obtain the authorization in writing or to give a copy to the consumer, is the account-holding financial institution in violation of the regulation?

A: No. The party that obtains the authorization—in this instance, the third party—is the person that is subject to these requirements. [§ 205.10(b)]

10-18.5 Q: *Preauthorized debits—authorization.* A consumer telephones the financial institution or designated payee to arrange for preauthorized electronic fund transfers from the consumer's account, and subsequently receives a form for authorizing the fund transfers. The consumer signs and returns one copy of the form, and retains a copy. Does this procedure comply with the regulation?

A: Yes; the confirmation form serves as the required written authorization. The regulation does not require that a prescribed format be used. (§ 205.10(b))

10-19 Q: *Preauthorized debits—stop-payment order.* On October 10, a consumer orally orders the financial institution to stop payment on a $30 utility bill that is scheduled to be paid on October 15. The payment is stopped. The consumer properly confirms the order in writing on October 17. On October 30 the utility company resubmits the $30 debit. Must the financial institution stop payment on the resubmitted item?

A: Yes. The institution may accomplish this, for example, by suspending all subsequent payments to the designated payee until the consumer notifies the institution that payments should resume. [§ 205.10(c)]

10-20 Q: *Ten-day notice of varying debits—pre-existing authorizations.* If the consumer agreed to varying preauthorized transfers from the consumer's account prior to May 10, 1980, must the financial institution (or the designated payee) give the consumer the 10-day advance notice of transfers that vary in amount?

A: Yes, unless the consumer has been informed of the right to receive notice of such varying payments and the consumer has authorized payment within a specified range of amounts. [§ 205.10(d)]

10-21 Q: *Ten-day notice—payee's failure to provide.* Does the financial institution holding the consumer's account have any liability for the designated payee's failure to provide notice of varying amounts?

A: No. [§ 205.10(d)]

Section 205.11—Procedures for Resolving Errors

11-1 Q: *Transfers—initiated by institution.* If a transfer is initiated by a financial institution or its employee without the consumer's authorization, does it constitute an error?

A: Yes. It constitutes an incorrect electronic fund transfer unless the transfer was authorized, for example, by a court order. [§ 205.11(a)]

11-2 Q: *Loss or theft of access device.* If a consumer reports the loss or theft of an access device, is the institution required to comply with the error resolution procedures?

A: No, unless the consumer also alleges possible unauthorized use as a consequence of the loss or theft. [§ 205.11(a)]

11-3 Q: *Error asserted after account closed.* Must an institution comply with the error resolution procedures if a consumer asserts an error after closing the account relationship with the institution?

A: Yes, assuming that the error allegation is properly made. [§ 205.11]

11-4 Q: *Request for documentation or information.* May a financial institution assume, absent a statement to the contrary by the consumer, that a request for duplicate copies of documentation or other information is for tax or other record-keeping purposes and therefore not an alleged error?

A: No. Requests for duplicate copies of documentation or other information should be treated as errors unless it is clear that the request by the consumer is *only* for tax or other record-keeping purposes. [§ 205.11(a)(7)]

11-5 Q: *Statement held for consumer—timing of error rights.* A consumer has arranged for periodic statements to be made available at the financial institution and held until called for. For purposes of the 60-day time limits for alleging an error, when is the statement for a particular cycle deemed to have been transmitted?

A: When it is first made available to the consumer. (See question 9-18.) [§ 205.11(b)(1)(i)(A)]

11-6 Q: *Failure to provide statement—timing of error rights.* How quickly must a consumer give notice that the financial institution failed to provide a periodic statement?

A: The notice of error must be received by the institution within 60 days from the date on which the statement should have been transmitted. [§ 205.11(a)(7) and (b)(1)(i)]

11-7 Q: *Discovery of error by institution.* Does discovery of an error by the financial institution require that the institution comply with the error resolution procedures?

A: No. The procedures need be followed only when a notice of error is received from the consumer or an agent of the consumer. [§ 205.11(b)(1)]

11-8 Q: *Content of error notice.* Must the notice of error given to the financial institution contain the consumer account number?

A: No, so long as the notice enables the institution to identify the account in question. [§ 205.11(b)(1)(ii)]

11-9 Q: *Written confirmation of error notice.* Must a financial institution have referral procedures for forwarding a written confirmation of error that is sent to the wrong address?

A: No. The referral requirement does not apply to a written confirmation that is sent to an address other than the one specified to the consumer at the time oral notice was given. [§ 205.11(b)(1)(i), footnote 10 and (b)(2)]

11-10 Q: *Written confirmation—timing of investigation.* May a financial institution delay its investigation until it has received a written confirmation?

A: No. The investigation must begin promptly upon receipt of the oral notice. This requirement is not affected by the institution's request for written confirmation. [§ 205.11(c) (1), (2), and (3)]

11-11 Q: *Deadlines for investigation of error.* May a financial institution take the full 10 business days or 45 days to investigate?

A: The requirement is to investigate promptly; the stated time periods are maximums. [§ 205.11(c) (1) and (2)]

11-11.5 Q: *POS debit card transactions.* The deadlines for investigating errors are extended for all transfers resulting from POS debit card transactions, regardless of whether an electronic terminal is involved. For purposes of these deadlines, what types of transactions can be viewed as POS debit card transactions?

A: POS debit card transactions generally take place at merchant locations, but also include mail and telephone orders of goods or services involving a debit card. Transactions at ATMs, however, are not POS even though the ATM may be in a merchant location. (§ 205.11(c)(4))

11-12 Q: *Request for documentation—facsimile or photocopy.* When a consumer requests documentation, may the institution provide a facsimile or a photocopy?

A: Yes, so long as the photocopy or facsimile is legible. [§ 205.11 (d)(1) and (f)(3)]

11-13 Q: *Request for documentation—third parties.* A consumer requests information or documentation that is not in the institution's possession, but in the possession of a third party with whom the financial institution has no agreement. How does an institution comply with the error resolution requirements?

A: By a timely response to the effect that the institution does not have the requested material. [§ 205.11(d)(2)]

11-14 Q: *Scope of investigation—bill payment to third party.* A consumer alleges an error involving a payment to a third party via a financial institution's telephone bill-payment plan. Is a review of the institution's own records a sufficient investigation?

A: Yes, assuming there is no agreement between the financial institution and the third party concerning the telephone bill-payment service. [§ 205.11(d)(2)]

11-15 Q: *Scope of investigation—preauthorized credits.* A consumer alleges an error regarding an EFT direct deposit of payroll. The financial institution and the payor have an agreement with respect to honoring an access device at point-of-sale terminals, but there is no agreement with the payor regarding the direct deposit of payroll. May the financial institution limit its investigation of the direct deposit error to a review of its own records?

A: Yes. The institution would be required to investigate beyond its own records only if the alleged error involved a POS transfer or if the financial institution and the payor did have an agreement regarding the direct deposit of payroll. [§ 205.11(d)(2)]

11-16 Q: *Scope of investigation—POS transfers.* A merchant agrees to honor a financial institution's access devices at the merchant's POS terminals. What is the institution's duty to investigate when a consumer alleges an error involving a transfer to the merchant via the POS terminal?

A: The financial institution must contact the merchant directly or, in systems like the national credit card networks, indirectly by contacting the merchant's bank. It may not rely on information previously transmitted by the merchant without verifying it. For example, the financial institution may have to request a copy of the sales slip signed by the consumer in order to verify that the amount of the transfer corresponds to the amount of the consumer's purchase. A financial institution is not required, however, to take such steps as sending an employee to the merchant's place of business to ascertain the correct cost of the merchandise purchased in the transaction. [§ 205.11(d)(2)]

11-17 Q: *Error found—different from that alleged.* When a financial institution determines that an error occurred in a manner or amount different from that described by the consumer, must the institution comply with both (1) the procedures applicable when the institution determines that no error occurred and (2) the procedures applicable when it determines that an error did occur?

A: Yes, to the extent that the procedures are relevant. In such a case, the institution may give notice of correction and the explanation either separately or in a combined form. [§ 205.11 (e) and (f)]

11-18 Q: *Crediting of interest.* Does the requirement to credit interest apply to all error corrections?

A: No, it applies only to those involving interest-bearing accounts. [§ 205.11(e)(1)]

11-19 Q: *Refunding of fees and charges.* Is the financial institution required, when it corrects an error, to refund all fees or charges imposed on the account?

A: The financial institution is required to refund those fees or charges that were imposed as a consequence of the error. In a combined credit/EFT transaction, for example, the financial institution must refund any finance charges incurred as a result of the error. Fees or charges that would have been imposed even if the error had not occurred need not be refunded. [§ 205.11(e)(1)]

11-20 Q: *Notice of correction—timing.* The regulation requires notice of a correction to be given promptly. Is this requirement satisfied if the institution includes the notice on a periodic statement mailed within the 10 business days or 45 calendar days?

A: Whether such a mailing will be prompt enough to satisfy the requirement must be determined by the financial institution, taking into account the specific facts involved. [§ 205.11(e), footnote 12]

11-21 Q: *Written explanation—timing.* If an institution completes its investigation on day 45 and determines that no error occurred, must it send the written explanation that same day?

A: Under the 45-day limit, the financial institution has an additional 3 business days to send the explanation. If, however, the financial institution is proceeding under the 10-business-day provision and determines on day 10 that no error occurred, the institution does not have an additional 3 business days; it must send the explanation on day 10. [§ 205.11(f)(1)]

11-22 Q: *Debiting of recredited funds—items to be honored.* If a financial institution debits a consumer's account for provisionally recredited funds, must it honor all items presented during the succeeding 5 business days?

A: No. The financial institution need honor only those items that would have been paid, under the bank's normal operating procedures, if the account had not been debited. For example: if an account with a balance of $155 is debited in an amount of $100 for provisionally recredited funds (leaving a balance of $55) and checks for $150 and $200 are presented by third parties, the financial institution need honor only the $150 item. Moreover, the institution need honor only items (including preauthorized transfers) payable to third parties. It need not permit ATM or other cash withdrawals by the consumer. [§ 205.11(f)(2)(ii)]

11-23 Q: *Debiting of recredited funds—an alternative procedure.* If the institution instead establishes a procedure under which it notifies the consumer that the consumer's account will be debited 5 business days from the transmittal of the notification—and specifies the calendar date on which this debiting will occur—does this procedure satisfy the requirement?

A: Yes. [§ 205.11(f)(2)(ii)]

11-24 Q: *Debiting of recredited funds—charges for overdrafts.* May a financial institution charge the consumer for overdrafts which occur as a consequence of the facts described in question 11-22?

A: The financial institution may not charge the consumer for overdraft items that are honored as a consequence of the 5-business-day requirement. It may, however, impose any normal transaction or item charges that are unrelated to an overdraft resulting from the debiting. The institution may, for example, impose a return-item charge relative to the $200 returned item referred to in question 11-22.

After the 5 business days, if the account is still overdrawn the institution may impose finance charges to which it is entitled (if any) under an overdraft credit plan. [§ 205.11(f)(2)(ii)]

11-25 Q: *Documents relied on—request from consumer.* When a consumer requests copies of documents that the financial institution relied on in determining that no error occurred, what is required?

A: The institution should provide copies of the documentation in a readily understandable form. An institution that relies on magnetic tape in making its determination should translate the data into readable form—by printing out the applicable data and explaining the codes, for example. [§ 205.11(f)(3)]

11-26 Q: *Documents relied on—privacy issue.* If a document contains information on several consumers, should a copy of the entire document be given to the consumer?

A: No. To protect the privacy of the other consumers, the institution should provide only the information relating to the consumer alleging the error. [§ 205.11(f)(3)]

11-27 Q: *Documents relied on—no information on relevant tapes.* If a financial institution's investigation shows that there is no information relating to the consumer on the magnetic tape or other documentation in question, what does the institution have to provide?

A: The financial institution may comply with the requirement to provide copies of documentation by informing the consumer that the relevant documents were searched and were found to contain no information about transfers relating to the consumer. [§ 205.11(f) (1) and (3)]

11-28 Q: *Withdrawal of error notice.* A consumer withdraws an allegation of error after the institution has investigated and has determined that no error occurred, but before the institution provided the written explanation. May the institution treat the error as voluntarily withdrawn?

A: Yes. [§ 205.11(g)]

11-29 Q: *Withdrawal of error notice.* A consumer calls the financial institution to question the amount of a Social Security deposit, and the institution suggests the difference may be due to a general decrease in benefits. Is the consumer's acceptance of the explanation a voluntary withdrawal of an error allegation?

A: Yes. [§ 205.11(g)]

11-30 Q: *Reassertion of error.* Does a consumer who has withdrawn an allegation of error have the right to reassert the allegation?

A: Yes, unless the financial institution had complied with all of the error resolution requirements before the allegation was withdrawn. The consumer must, however, reassert the error by giving proper notice within the original 60-day period. [§ 205.11 (b) and (h)]

11-31 *Charges for error resolution.* May a financial institution charge consumers for the institution's compliance with the error resolution procedures?

A: Although the regulation is silent on this point, the Board has expressed concern about any chilling effect on the good faith assertion of errors that might result from the imposition of charges. Financial institutions should be aware of the prohibition against agreements that constitute a waiver of rights conferred by the act. [§ 205.11, section 914]

11-32 Q: *Applicable error resolution provisions—overdraft credit line.* A consumer withdraws funds from a checking account by use of an ATM and the withdrawal overdraws the account, thereby resulting in a transfer of funds from the credit line to the checking account. If an error is alleged, which error resolution procedures apply to the overdraft portion, Regulation E or Regulation Z?

A: Regulation E applies because there has been an electronic fund transfer. The financial institution must follow the requirements of the error resolution provisions of Regulation E that deal with the definition of error, requirements for notice, and procedures for correction of errors.

Section 226.13 (d) and (g) of Regulation Z continue to apply to the credit extension portion. These include the temporary prohibition on collection actions; the consumer's right to withhold disputed amounts; the limitation on adverse credit reports; and the right to prevent an automatic debit of disputed amounts. [§ 205.11(i)]

11-33 Q: *Applicable error resolution procedures—credit card/access device.* If a consumer uses a combined credit card/access device to withdraw funds at an ATM directly from a non-overdraft credit line and later alleges an error, which error resolution procedures apply—Regulation E or Regulation Z?

A: Regulation Z applies because the credit line is not a consumer asset account. The transaction thus does not involve an electronic fund transfer. [§ 205.11(i)]

Section 205.12—Relation to State Law

12-1 Q: *Preemption of state EFT laws—specific determinations.* The regulation prescribes standards for determining whether state laws that govern electronic fund transfers are preempted by the act and the regulation. If, under these standards, a state law is inconsistent with the federal law, and is not more protective, is it automatically preempted by operation of law, absent a Board determination of preemption?

A: State law may be preempted even if the Board has not issued a determination. Interested parties may seek a Board determination by following the procedures set forth in the regulation. (§ 205.12 (a) and (b))

Section 205.13—Administrative Enforcement

13-1 Q: *Disclosure forms—compliance.* Will the Board or its staff review or approve disclosure forms or statements for financial institutions?

A: No. However, the Board has issued model clauses that financial institutions may use, if they wish, when designing their forms or statements. If a financial institution uses these clauses accurately to reflect its services, the financial institution is protected from liability for failure to make disclosures in proper form. [Appendix A, section 915(d)]

13-2 Q: *Record retention—evidence of compliance.* Must a financial institution retain records that it has given disclosures and documentation to *each* consumer?

A: No, it need only retain evidence demonstrating that its procedures reasonably insure the consumer's receipt of the required disclosures and documentation. [§ 205.13(c)(1)]

Section 205.14—Services Offered by Financial Institutions Not Holding Consumer's Account

14-1 Q: *Applicability to preauthorized credits.* Does this section apply to an institution which initiates preauthorized electronic payroll deposits on behalf of the consumer's employer to the consumer's account at another financial institution?

A: No. This section applies only when the service-providing institution, issues an access device to a consumer (a debit card or a code, for example) with which the consumer can initiate transfers to or from the consumer's account at another institution, *and* the two institutions have no agreement with regard to this service. Because a code used to initiate telephone transfers is an access device, the section applies, for example, when a financial institution which holds a consumer's account periodically transfers funds to or from the consumer's account at another financial institution upon receiving instructions from the consumer on the telephone. [§ 205.14 (a) and (c)]

14-2 Q: *Applicability of account at both institutions.* Does the fact that the consumer holds an account at both financial institutions involved in the transfer negate the application of this section?

A: No, assuming the institutions have no agreements with each other as to the EFT service. [§ 205.14(a)]

14-3 Q: *Agreement.* If an ACH establishes arrangements in which its members agree to honor each other's EFT cards, is there an "agreement" for purposes of this section?

A: Yes [§ 205.14(c)]

14-4 Q: *Periodic statement—service-providing institution.* Does the service-providing institution have to provide to the consumer a periodic statement showing transfers other than electronic fund transfers made with the service provider's access device?

A: No. [§ 205.14(a)(2)]

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PART 206—SECURITIES OF STATE MEMBER BANKS

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INTERPRETATIONS

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206.102 Disclosure of loans to "insiders."
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AUTHORITY: Sec. 12(i) of the Securities Act of 1934, as amended (15 U.S.C. 78*l*(i) (the "Act")).

SOURCE: 40 FR 50458, Oct. 30, 1975, unless otherwise noted.

REGULATIONS

§ 206.1 Scope of part.

This part is issued by the Board of Governors of the Federal Reserve System (the "Board") pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78) (the "Act") and applies to all securities subject to registration pursuant to section 12(b) or section 12(g) of the Act by a bank that is organized under State law and is a member of the Federal Reserve System ("bank").

§ 206.2 Definitions.

For the purposes of this part, including all forms and instructions promulgated for use in connection herewith, unless the context otherwise requires:

(a) The terms "exchange", "director", "person", "security", and "equity security" have the meanings given them in section 3(a) of the Act.

(b) The term "affiliate" (whether referred to as an "affiliate" of, or a person "affiliated" with, a specified person) means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(c) The term "amount", when used with respect to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(d) The term "associate", when used to indicate a relationship with any person, means (1) any corporation or organization (other than the bank or a majority-owned subsidiary of the bank) of which such person is an officer or partner or is, directly or indirectly, either alone or together with one or more members of his immediate family, the beneficial owner of 10 per cent or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person, or who is a director or officer of the bank or any of its parents or subsidiaries.

(e) The term "charter" includes articles of incorporation, declarations of trust, articles of association or partnership, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

(f) The term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(g) The term "employee" does not include a director, trustee, or officer.

(h) The term "equity capital accounts" means capital stock, surplus, undivided profits, and reserve for contingencies and other capital reserves.

(i) The term "fiscal year" means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

(j) (1) For the purpose of determining whether the registration requirements of section 12(g)(1) of the Act are applicable, securities shall be deemed to be "held of record" by each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the bank, subject to the following:

(i) In any case where the records of security holders have not been maintained in accordance with accepted practice, any additional person who would be identified as such an owner on such records if they had been maintained in accordance with accepted practice shall be included as a holder of record.

(ii) Securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person.

(iii) Securities identified as held of record by one or more persons as trustees, executors, guardians, custodians, or in other fiduciary capacities with respect to a single trust, estate, or account shall be included as held of record by one person.

(iv) Securities held by two or more persons as co-owners shall be included as held by one person.

(v) Each outstanding unregistered or bearer certificate shall be included as held of record by a separate person, except to the extent that the bank can establish that, if such securities were registered, they would be held of record, under the provisions of this paragraph (j), by a lesser number of persons.

(vi) Securities registered in substantially similar names, where the bank has reason to believe because of the address or other indications that such names represent the same person, may be included as held of record by one person.

(2) Notwithstanding paragraph (5)(1) of this section:

(i) Securities held subject to a voting trust, deposit agreement, or similar arrangement shall be included as held of record by the record holders of the voting trust certificates, certificates of deposit, receipts, or similar evidences of interest that the bank may rely in good faith on such information as is received in response to its request from a nonaffiliated issuer of the certificates or interests.

(ii) If the bank knows or has reason to know that the form of holding securities of record is used principally to circumvent the provisions of section 12(g)(1) of the Act, the beneficial owners of such securities shall be deemed to be record owners thereof.

(k) The term "immediate family" includes a person's (1) spouse; (2) son, daughter, and descendant of either; (3) father, mother, and ancestor of either; (4) stepson and stepdaughter; and (5) stepfather and stepmother. For the purpose of determining whether any of the foregoing relationships exist, a legally adopted child shall be considered a child by blood.

(l) The term "information statement" means the statement required by § 206.5(a), whether or not contained in a single document.

(m) The term "last fiscal year" of bank means the last fiscal year of bank ending prior to the date of the meeting with respect to which an information statement is required to be distributed.

(n) The term "listed" means admitted to full trading privileges upon application by the bank and includes securities for which authority to add to the list on official notice of issuance has been granted.

(o) The term "majority-owned subsidiary" means a subsidiary more than 50 per cent of whose outstanding securities representing the right, other than as affected by events of default, to vote for the election of directors, is owned by the subsidiary's parent and/or one or more of the parent's other majority-owned subsidiaries.

(p) The term "material", when used to qualify a requirement for furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before buying or selling the security registered.

(q) The term "officer" means a Chairman of the Board of Directors, Vice Chairman of the Board, Chairman of the Executive Committee, President, Vice President (except as indicated in the next sentence), Cashier, Treasurer, Secretary, Comptroller, and any other person who participates in major policymaking functions of the bank. In some banks (particularly banks with officers bearing titles such as Executive Vice President, Senior Vice President, or First Vice President as well as a number of "Vice Presidents"), some or all "Vice Presidents" do not participate in major policymaking functions, and such persons are not officers for the purpose of this part.

(r) The term "option" means any option, warrant, or right other than those issued to security holders on a pro rata basis.

(s) The term "parent" of a specified person is a person controlling such person directly, or indirectly through one or more intermediaries.

(t) The term "plan" includes all plans, contracts, authorizations, or arrangements, whether or not set forth in any formal document.

(u) The term "predecessor" means a person the major portion of the business and assets of which another person acquired in a single succession or in a series of related successions.

(v) The terms "previously filed" and "previously reported" mean previously filed with, or reported in, a registration statement under section 12, a report under section 13, or a definitive proxy statement or statement where management does not solicit proxies under section 14 of the Act, which statement or report has been filed with the Board, except that information contained in any such document shall be deemed to have been previously filed with or reported to an exchange only if such document is filed with such exchange.

(w) The term "principal underwriter" means an underwriter in privity of contract with the bank of the securities as to which he is underwriter.

(x) The term "promoter" includes: (1) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the bank; (2) any person who, in connection with the founding and organizing of the bank, directly or indirectly receives in consideration of services or property or both services and property 10 per cent or more of any class of securities of the bank or 10 per cent or more of the proceeds from the sale of any class of such securities. A person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not, however, be deemed a promoter if such person does not otherwise take part in founding and organizing the bank.

(y) The term "proxy" includes every proxy, consent, or authorization within the meaning of section 14(a) of the Act. The consent or authorization may take the form of failure to object or to dissent.

(z) The term "proxy statement" means the statement required by § 206.5(a), whether or not contained in a single document.

(aa) The terms "qualified stock option", "restricted stock option", and "employee stock purchase plan" have the meanings given them in sections 422 through 424 of the Internal Revenue Code of 1954, [as amended. For the purposes of this regulation, an option which meets all of the conditions of section 424(b) of the Internal Revenue Code of 1954, as amended, other than the date of issuance shall be deemed to be a "restricted stock option".

(bb) The term "registration statement" or "statement", when used with reference to registration pursuant to § 206.4 of this part, includes both an application for registration of securities on a national securities exchange pursuant to section 12(b) of the Act and a registration statement filed pursuant to section 12(g) of the Act.

(cc) The term "share" means a share of stock in a corporation or unit of interest in an unincorporated person.

(dd) The term "significant subsidiary" means a subsidiary meeting any of the following conditions:

(1) The investments in the subsidiary by its parent plus the parent's proportion of the investments in such subsidiary by the parent's other subsidiaries, if any, exceed 5 per cent of the equity capital accounts of the bank. "Investments" refers to the amount carried on the books of the parent and other subsidiaries or the amount equivalent to the parent's proportionate share in the equity capital accounts of the subsidiary, whichever is greater; or

(2) The parent's proportion of the gross operating revenues of the subsidiary exceeds 5 per cent of the gross op-

erating revenues of the parent and its consolidated subsidiaries; or

(3) The parent's proportion of income of the subsidiary before income taxes exceeds 5 per cent or more of the income before income taxes of the parent and its consolidated subsidiaries, provided that if such income of the parent and its consolidated subsidiaries is at least 5 per cent lower than the average of such income for the last five fiscal years such average income may be substituted in the determination.

[Note: The subsidiary may be the parent of one or more subsidiaries and, together with such subsidiaries may, if considered in the aggregate, constitute a significant subsidiary.]

(ee) The terms "solicit" and "solicitation" means (1) any request for a proxy whether or not accompanied by or included in a form of proxy; (2) any request to execute or not to execute, or to revoke, a proxy; or (3) the furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy. The terms do not apply, however, to the furnishing of a form of proxy request of such security holder, the performance by the bank of acts required to a security holder upon the unsolicited by § 206.5(g), or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

(ff) A "subsidiary" of a bank is (1) an affiliate controlled by the bank, directly or indirectly, through one or more intermediaries, except where the control (i) exists by reason of ownership or control of voting securities by the bank in a fiduciary capacity, or (ii) was obtained by the bank in the course of securing or collecting a debt previously contracted in good faith, or (2) a person a majority of whose voting securities are held in trust for the benefit of the holders of a class of stock of the bank pro rata.

(gg) The term "succession" means the direct acquisition of the [shares or] assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer. The term does not include the acquisition of control of a business unless followed by the direct acquisition of its [shares or] assets. The term "succeed" and "successor" have meanings correlative to the foregoing.

(hh) The term "verified", when used with respect to financial statements, means either (1) certified by an independent public accountant, or (2) signed in accordance with § 206.7(b)(2) by the person principally responsible for the accounting records of the bank (the "principal accounting officer") and by the person principally responsible for the audit procedures of the bank (the "auditor"); except that the term "verified" shall mean certified by an independent public accountant in any case in which the Board so informs the bank concerned, in writing, at least 90 days prior to the end of the fiscal year to which the financial statements will relate.

(ii) The term "voting securities" means securities the holders of which are presently entitled to vote for the election of directors.

(jj) The terms "beneficial ownership", "beneficially owned", and the like, when used with respect to the reporting of ownership of the bank's equity securities in any statement or report required by this part, shall include, in addition to direct and indirect beneficial ownership by the reporting person, ownership of such securities (1) by the spouse (except where legally separated) and minor children of such reporting person, and (2) by any other relative of the reporting person who has the same home as such person.

§ 206.3 Inspection and publication of information and safe harbor from liability for forward-looking statements filed under the Act.

(a) *Filing of material with the Board.* All papers required to be filed with the Board pursuant to the Act or regulations thereunder shall be filed at its office in Washington, DC. Material may be filed by delivery to the Board, through the mails, or otherwise. The date on which papers are actually received by the Board shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(b) *Inspection.* Except as provided in paragraph (c) of this section, [all information filed, other than ownership reports required to be filed pursuant to § 206.6(a),] regarding a security registered with the Board will be available for inspection at the Federal Deposit Insurance Corporation, 550 Seventeenth Street, NW., Washington, DC. In addition, copies of the registration statement and reports required by § 206.4 (exclusive of exhibits), the statements required by § 206.5(a), and the annual reports to security holders required by § 206.5(c), will be available for inspection at the New York, Chicago, and San Francisco Federal Reserve Banks and at the Reserve Bank of the district in which the bank filing the statements or reports is located. [The ownership reports required to be filed pursuant to § 206.6(a) will be available for public inspection at the Board's office in Washington, D.C.]

(c) *Nondisclosure of certain information filed.* Any person filing any statement, report, or document under the Act may make written objection to the public disclosure of any information contained therein in accordance with the procedure set forth below:

(1) The person shall omit from the statement, report, or document, when it is filed, the portion thereof that it desires to keep undisclosed (hereinafter called the confidential portion). In lieu thereof, it shall indicate at the appropriate place in the statement, report, or document that the confidential portion has been so omitted and filed separately with the Board.

(2) The person shall file with the copies of the statement, report, or document filed with the Board:

(i) As many copies of the confidential portion, each clearly marked "CONFIDENTIAL TREATMENT", as there are copies of the statement, report, or document filed with the Board and with each exchange, if any. Each copy shall contain the complete text of the item and, notwithstanding that the confidential portion does not constitute the whole of the answer, the entire answer thereto; except that in case the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. All copies of the confidential portion shall be in the same form as the remainder of the statement, report, or document.

(ii) An application making objection to the disclosure of the confidential portion. Such application shall be on a sheet or sheets separate from the confidential portion, and shall contain (A) an identification of the portion of the statement, report, or document that has been omitted, (B) a statement of the grounds of objection, and (C) the name of each exchange, if any, with which the statement, report, or document is filed. The copies of the confidential portion and the application filed in accordance with this subparagraph shall be enclosed in a separate envelope marked "CONFIDENTIAL TREATMENT" and addressed to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551.

(3) Pending the determination by the Board as to the objection filed in accordance with paragraph (c)(2) of this section, the confidential portion will not be disclosed by the Board.

(4) If the Board determines that the objection shall be sustained, a notation to that effect will be made at the appropriate place in the statement, report, or document.

(5) If the Board shall have determined that disclosure of the confidential portion is in the public interest, a finding and determination to that effect will be entered and notice of the finding and determination will be sent by registered or certified mail to the person.

(6) The confidential portion shall be made available to the public:

(i) Upon the lapse of 15 days after the dispatch of notice by registered or certified mail of the finding and determination of the Board described in paragraph (c)(5) of this section, if prior to the lapse of such 15 days the person shall not have filed a written statement that he intends in good faith to seek judicial review of the finding and determination:

(ii) Upon the lapse of 60 days after the dispatch of notice by registered or certified mail or the finding and determination of the Board, if the statement described in clause (i) shall have been filed and if a petition for judicial review shall not have been filed within such 60 days; or

(iii) If such petition for judicial review shall have been filed within such 60 days, upon final disposition, adverse to the person, of the judicial proceedings.

(7) If the confidential portion is made available to the public, a copy thereof shall be attached to each copy of the statement, report, or document filed with the Board and with each exchange concerned.

(d) *Safe Harbor from Liability for Forward-Looking Statements.* (1) A statement within the coverage of paragraph (d)(2) of this section which is made by or on behalf of a bank filing any statement, report, or document under the Act or by an outside reviewer retained by the bank shall be deemed not to be a fraudulent statement (as defined in paragraph (d)(4) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(2) Paragraph (d)(1) of this section applies to (i) a forward-looking statement (as defined in paragraph (d)(3) of this section) made in a document filed with the Board or in an annual report to shareholders meeting the requirements of § 206.5(c) of Regulation F (12 CFR 206.5(c)); (ii) a statement reaffirming the forward-looking statement referred to in paragraph (d)(2)(i) of this section subsequent to the date the document was filed or the annual report was made publicly available; or (iii) a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such forward-looking statement is affirmed in a filed document or annual report made publicly available within a reasonable time after the making of such forward-looking statement.

(3) For the purpose of this subsection, the term "forward-looking statement" shall mean and shall be limited to:

(i) A statement containing a projection or revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(ii) A statement of management's plans and objectives for future operations;

(iii) A statement of future economic performance contained in management's discussion and analysis of the summary of earnings as called for by general instructions (g) and (h) to the Quarterly Report on Form F-4; and

(iv) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraph (d)(3) (i), (ii), or (iii) of this section.

(4) For the purpose of this regulation the term "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Act of 1934 or the regulations promulgated thereunder.

(5) Notwithstanding any of the provisions of paragraphs (d) (1) through (4) of this section, this rule shall apply only to forward-looking statements made by or on behalf of a bank, if, at the time such statements are made or reaffirmed, the bank is subject to the reporting requirements of the Securities Exchange Act of 1934 and had filed its most recent annual report with the Board on Form F-2.

[40 FR 50458, Oct. 30, 1975, as amended at 46 FR 11238, Feb. 6, 1981]

§ 206.4 Registration statements and reports.

(a) *Requirement of registration statement.* Securities of a bank shall be registered under the provisions of either section 12(b) or section 12(g) of the Act by filing a statement in conformity with the requirements of Form F-1, [Form F-1B (in the case of registration of securities of a successor bank),] or Form F-10 (in the case of registration of an additional class of securities). No registration shall be required under the provisions of section

12(b) or section 12(g) of the Act of any warrant or certificate evidencing a right to subscribe to or otherwise acquire a security of a bank if such warrant or certificate by its terms expires within 90 days after the issuance thereof.

(1) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of a bank, not previously registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another bank which is registered pursuant to section 12(g), the class of securities so issued shall be deemed to be registered pursuant to section 12(g) of the Act unless upon consummation of the succession such class is exempt from such registration or all securities of such class are held of record by less than 300 persons.

(2) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of a bank, which are not registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another bank which is required to file a registration statement pursuant to section 12(g) but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the bank whose class of securities is so issued and such bank shall file a registration statement pursuant to section 12(g) of the Act with respect to such class within the period of time the predecessor bank would have been required to file such a statement, or within such extended period of time as the Board may authorize upon application pursuant to § 206.4(r), unless upon consummation of the succession such class is exempt from such registration or all securities of the class are held of record by less than 300 persons.

(b) *Registration effective as to class or series.* Depending upon whether the security is to be listed on an exchange, registration shall become effective as provided in section 12(d) or section 12(g)(1) of the Act as to the entire class of such security, then or thereafter authorized. If, however, a class of security is issuable in two or more series with different terms, each such series shall be deemed a separate class for the purposes of this paragraph.

(c) *Acceleration of effectiveness of registration.* A request for acceleration of the effective date of registration shall be made in writing by either the bank, an exchange, or both and shall briefly describe the reasons therefor.

(d) *Exchange certification.* (1) Certification that a security has been approved by an exchange for listing and registration pursuant to section 12(d) of the Act shall be made by the governing committee or other corresponding authority of the exchange.

(2) The certification shall specify (i) the approval of the exchange for listing and registration; (ii) the title of the security so approved; (iii) the date of filing with the exchange of the registration statement and of any amendments thereto; and (iv) any conditions imposed on such certification. The exchange shall promptly notify the Board of the partial or complete satisfaction of any such conditions.

(3) The certification may be made by telegram but in such case shall be confirmed in writing. All certifications in writing and all amendments thereto shall be filed with the Board in duplicate and at least one copy shall be manually signed by the appropriate exchange authority.

(4) The date of receipt by the Board of the certification approving a security for listing and registration shall be the date on which the certification is actually received by the Board or the date on which the registration statement to which the certification relates is actually received by the Board, whichever date is later.

(5) If an amendment to the registration statement is filed with the exchange and with the Board after the receipt by the Board of the certification of the exchange approving the security for listing and registration, the certification, unless withdrawn, shall be deemed made with reference to the statement as amended.

(6) An exchange may, by notice to the Board, withdraw its certification prior to the time that the registration to which it relates first becomes effective pursuant to paragraph (b) of this section.

(7) An exchange may suspend from trading a bank security listed and registered thereon in accordance with its rules. Suspension of trading shall not terminate the registration of any bank security.

(e)(1) *Requirement of annual reports.* Every registrant bank shall file an annual report for each fiscal year after the last full fiscal year for which financial statements were filed with the registration statement. The report, which shall conform to the requirements of Form F-2, shall be filed within 90 days after the close of the fiscal year or within 30 days of the mailing of the bank's annual report to stockholders, whichever occurs first.

(2) Every bank which changes its fiscal closing date after the last fiscal year for which financial statements were filed in a Form F-1 or Form F-2 shall file a report on Form F-2 covering the resulting interim period not more than 120 days after the close of the interim period or after the date of the determination to change the fiscal closing date, whichever is later. A separate report, however, need not be filed for any period of less than three months if the Form F-2 filed for the succeeding full fiscal year covers the interim period as well as the fiscal year. In such case, balance sheets need be furnished only as of the close of the entire period but all other financial statements and schedules shall be filed separately for both periods.

(f) *Annual reports of predecessors.* Every bank having securities registered pursuant to section 12 of the Act on Form F-1 (or Form F-10, in the case of registration of an additional class of securities) shall file an annual report pursuant to paragraph (e) of this section for each of its predecessors which had securities registered pursuant to section 12 covering the last full fiscal year of the predecessor prior to the registrant's succession, unless such report has been filed by the predecessor. Such annual report shall contain the information that would be required if filed by the predecessor.

(g) *Exception from requirement for annual report.* Notwithstanding paragraph (e) of this section, any bank that has filed, within the period prescribed for filing an annual report pursuant to that paragraph, a registration statement that has become effective and is not subject to any proceeding under section 15(c) or section 19(a) of the Act, or to an order thereunder, need not file an annual report if such statement covers the fiscal period that would be covered by such annual report and contains all of the information, including financial statements and exhibits, required for annual reports.

(h) *Current reports.* (1) Every registrant bank shall file a current report in conformity with the requirements of Form F-3 within the period specified in that form unless substantially the same information as that required by Form F-3 has been previously reported by the bank.

(2) Each bank having securities registered pursuant to section 12(g) of the Act, upon being notified by a national securities association registered pursuant to section 15A of the Act, that a class of the bank's securities is to be quoted on an interdealer quotation system which is sponsored and governed by the rules of such association, shall thereafter notify such association promptly of (i) any increase or decrease in the amount of securities of such class outstanding which exceeds 5 percent of the amount of such class last reported to the association and (ii) any change in the name of the bank. The obligation to report pursuant to this paragraph (h)(2) shall continue until notification is received from the association that all classes of securities are no longer quoted on such interdealer quotation system.

(3) (i) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a member State bank, of a class which is registered pursuant to section 12 of the Act, (except nonvoting securities), is directly or indirectly the beneficial owner of more than 5 percent of such class shall, within 10 days after such acquisition, send to the bank at its principal executive office, by registered or certified mail, and to each exchange where the security is traded, and file with the Board, a statement containing the information required by Form F-11. Eight copies of the

statement, including all exhibits, shall be filed with the Board.

(ii)(A) A person who would otherwise be obligated under paragraph (h)(3)(i) of this section to file a statement on Form F-11 may, in lieu thereof, file with the Board, within 45 days after the end of the calendar year in which such person became so obligated, eight copies, including all exhibits, of a short form statement on Form F-11A and send one copy each of such form to the bank at its principal executive office, by registered or certified mail, and to the principal national securities exchange where the security is traded: *Provided,* That it shall not be necessary to file a Form F-11A unless the percentage of the class of equity security beneficially owned as of the end of the calendar year is more than 5 percent: And *provided further,* That:

(*1*) Such person has acquired such securities in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 206.4(h)(5)(i); and

(*2*) Such person is:

(*i*) A broker or dealer registered under section 15 of the Act;

(*ii*) A bank as defined in section 3(a)(6) of the Act;

(*iii*) An insurance company as defined in section 3(a)(19) of the Act;

(*iv*) An investment company registered under section 8 of the Investment Company Act of 1940;

(*v*) An investment adviser registered under section 203 of the Investment Advisers Act of 1940;

(*vi*) An employee benefit plan, or pension fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") or an endowment fund;

(*vii*) A parent holding company, provided the aggregate amount held directly by the parent, and directly and indirectly by its subsidiaries which are not persons specified in paragraphs (h)(3)(ii)(A)(*2*)(*i*) through (*vii*) of this section, does not exceed 1 percent of the securities of the subject class;

(*viii*) A group, provided that all the members are persons specified in paragraphs (h)(3)(ii)(A)(*2*)(*i*) through (*vii*) of this section; and

(*3*) Such person has promptly notified any other person (or group within the meaning of section 13(d)(3) of the Act) on whose behalf it holds, on a discretionary basis, securities exceeding 5 percent of the class, of any acquisition or transaction on behalf of such other person that might be reportable by that person under section 13(d) of the Act. This paragraph only requires notice to the account owner of information that the filing person reasonably should be expected to know and that would advise the account owner of an obligation he may have to file a statement pursuant to section 13(d) of the Act or an amendment thereto.

(B) Any person relying on paragraphs (h)(3)(ii)(A) and (h)(4)(ii)(B) of this section shall, in addition to filing any statements required thereunder, file a statement on Form F-11A, within ten days after the end of the first month in which such person's direct or indirect beneficial ownership exceeds 10 percent of a class of equity securities specified in paragraph (h)(3)(i) of this section computed as of the last day of the month, and thereafter within ten days after the end of any month in which such person's beneficial ownership of securities of such class, computed as of the last day of the month, increases or decreases by more than 5 percent of such class of equity securities. Eight copies of such statement, including all exhibits, shall be filed with the Board and one each sent, by registered or certified mail, to the bank at its principal executive office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of 5 percent or less of the class of securities, no additional filings are required by this paragraph (ii)(B) unless the person thereafter becomes the beneficial owner of more than 10 percent of the class and is required to file pursuant to this provision.

(C)(*1*) Notwithstanding paragraphs (h)(3)(ii)(A) and (ii)(B) and (h)(4)(ii) of this section, a person shall immediately become subject to (h)(3)(i) and (h)(4)(i) of this section and shall promptly, but not more than ten days later, file a statement on Form F-11 if such person:

(*i*) Has reported that the person is the beneficial owner of more than 5 percent of a class of equity securities in a statement on Form F-11A pursuant to paragraph (ii)(A) or (ii)(B), or is required to report such acquisition but has not yet filed the form;

(*ii*) Determines that the person no longer has acquired or holds such securities in the ordinary course of business or not with the purpose nor with the effect of changing or influencing the control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 206.4(h)(5)(ii); and

(*iii*) Is at that time the beneficial owner of more than 5 percent of a class of equity securities described in paragraph (h)(3)(i) of this section.

(*2*) For the ten-day period immediately following the date of the filing of a Form F-11 pursuant to this paragraph (h)(3)(ii)(C), such person shall not:

(*i*) Vote or direct the voting of the securities described in paragraph (h)(3)(ii)(C)(*1*)(*i*); nor,

(*ii*) Acquire an additional beneficial ownership interest in any equity securities of the bank nor of any person controlling the bank.

(D) Any person who has reported an acquisition of securities in a statement on Form F-11A pursuant to paragraph (ii)(A) or (ii)(B) and thereafter ceases to be a person specified in paragraph (ii)(A)(*2*) shall immediately become subject to paragraphs (h)(3)(i) and (h)(4)(i) of this section and shall file, within ten days thereafter, a statement on Form F-11 in the event such person is a beneficial owner at that time of more than 5 per cent of the class of equity securities.

(iii) Any person who, as of December 31, 1979, or as of the end of any calendar year thereafter, is directly or indirectly the beneficial owner of more than 5 per cent of any equity security of a class specified in paragraph (h)(3)(i) of this section and who is not required to file a statement under paragraph (h)(3)(i) of this section by virtue of the exemption provided by section 13(d)(6)(A) or (B) of the Act, or because such beneficial ownership was acquired prior to December 20, 1970, or because such person otherwise (except for the exemption provided by section 13(d)(6)(C) of the Act) is not required to file such statement, shall, within 45 days after the end of the calendar year in which such person became obligated to report under this paragraph, send to the bank at its principal executive office, by registered or certified mail, and file with the Board, a statement containing the information required by Form F-11A. Eight copies of the statement, including all exhibits, shall be filed with the Board.

(iv) For the purposes of sections 13(d) and 13(g), any person, in determining the amount of outstanding securities of a class of equity securities, may rely upon information set forth in the bank's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Board pursuant to this Act, unless he knows or has reason to believe that the information contained therein is inaccurate.

(v)(A) Whenever two or more persons are required to file a statement containing the information required by Form F-11 or Form F-11A with respect to the same securities, only one statement need be filed, *Provided*, that:

(*1*) Each person on whose behalf the statement is filed is individually eligible to use the Form on which the information is filed;

(*2*) Each person on whose behalf the statement is filed is responsible for the timely filing of such statement and any amendments thereto, and for the completeness and accuracy of the information concerning such person contained therein; such person is not responsible for the completeness or accuracy of the information concerning the other persons making the filing, unless such person knows or has reason to believe that such information is inaccurate; and

(*3*) Such statement identifies all such persons, contains the required information with regard to each such person, indicates that such statement is filed on behalf of all such persons, and includes, as an exhibit, their agreement in writing that such a statement is filed on behalf of each of them.

(B) A group's filing obligations may be satisfied either by a single joint filing or by each of the group's members making an individual filing. If the group's members elect to make their own filings, each such filing should identify all members of the group but the information provided concerning the other persons making the filing need only reflect information which the filing person knows or has reason to know.

(4)(i) *Form F-11*—If any material change occurs in the facts set forth in the statement required by paragraph (h)(3)(i) of this section including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file or cause to be filed with the Board and send or cause to be sent to the bank at its principal executive office, by registered or certified mail, and to each exchange on which the security is traded an amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to 1 per cent or more of the class of securities shall be deemed "material" for purposes of this rule; acquisitions or dispositions of less than such amounts may be material, depending upon the facts and circumstances. The requirement that an amendment be filed with respect to an acquisition which materially increases the percentage of the class beneficially owned shall not apply if such acquisition is exempted by section 13(d)(6)(B) of the Act. Eight copies of each such amendment shall be filed with the Board.

(ii) *Form F-11A*—Notwithstanding paragraph (h)(4)(i) of this section, and provided that the person or persons filing a statement pursuant to paragraph (h)(3)(ii) of this section continues to meet the requirements set forth therein, any person who has filed a short form statement on Form F-11A shall amend such statement within 45 days after the end of each calendar year to reflect, as of the end of the calendar year any changes in the information reported in the previous filing on that Form, or if there are no changes from the previous filing, a signed statement to that effect under cover of Form F-11A. Eight copies of such amendment, including all exhibits, shall be filed with the Board and one each sent, by registered or certified mail, to the bank at its principal executive office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of 5 per cent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than 5 per cent of the class and is required to file pursuant to paragraph (h)(3) of this section.

NOTE: For persons filing a short form statement pursuant to paragraph (h)(3)(ii) of this section, see also paragraph (h)(3)(ii)(B), (C), and (D) of this section.

(5)(i) For the purposes of sections 13(d) and 13(g) of the Act, a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(A) Voting power which includes the power to vote, or to direct the voting of, such security; and/or

(B) Investment power which includes the power to dispose or to direct the disposition of such security.

(ii) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of section 13(d) or 13(g) of the Act shall be deemed for purposes of such sections to be the beneficial owner of such security.

(iii) All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person.

(iv) Notwithstanding the provisions of paragraphs (h)(5) (i) and (iii) of this section:

(A)(*1*) A person shall be deemed to be the beneficial owner of a security, subject to the provisions of paragraph (h)(5)(ii) of this section, if that person has the right to acquire beneficial ownership of such security, as defined in paragraph (h)(3)(i) of this section, within 60 days, including but not limited to any right to acquire: (*i*) Through the exercise of any option, warrant, or right; (*ii*) through the conversion of a security; (*iii*) pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or (*iv*) pursuant to the automatic termination of a trust, discretionary account or similar arrangement; provided, however, any person who acquires a security or power specified in paragraphs (h)(5)(iv)(A)(*1*)(*i*), (*ii*) or (*iii*) of this section, with the purpose or effect of changing or influencing the control of the bank, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to such options, warrants, rights or conversion privileges shall be deemed to be outstanding securities of the class owned by such person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class by any other person.

(*2*) Paragraph (A)(*1*) remains applicable for the purpose of determining the obligation to file with respect to the underlying security even though the option, warrant, right or convertible security is of a class of equity security, as defined in paragraph (h)(3)(i) of this section and may therefore give rise to a separate obligation to file.

(B) A member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange may direct the vote of such securities, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction.

(C) A person who in the ordinary course of business is a pledgee of securities under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged securities until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged securities will be exercised, provided that:

(*1*) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the bank, nor in connection with any transaction having such purpose or effect, including any transaction subject to paragraph (h)(5)(ii) of this section;

(*2*) The pledgee is a person specified in paragraph (h)(3)(ii)(A)(*2*) of this section, including persons meeting the conditions set forth in paragraph (h) thereof; and

(*3*) The pledgee agreement, prior to default, does not grant to the pledgee:

(*i*) The power to vote or to direct the vote of the pledged securities; or

(*ii*) The power to dispose or direct the disposition of the pledged securities, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended subject to Regulation T (12 CFR Part 220) and in which the pledgee is a broker or dealer registered under section 15 of the Act.

(D) A person engaged in business as an underwriter of securities who acquires securities through his participation in good faith in a firm commitment underwriting registered under the Securities Act of 1933 shall not be deemed to be the beneficial owner of such securities until the expiration of 40 days after the date of such acquisition.

(6) Any person may expressly declare in any statement filed that the filing of such statement shall not be construed as an admission that such person is, for the purposes of section 13(d) or 13(g) of the Act, the beneficial owner of any securities covered by the statement.

(7)(i) A person who becomes a beneficial owner of securites shall be deemed to have acquired such securities for purposes of section 13(d)(1) of the Act, whether such acquisition was through purchase or otherwise. However, executors or administrators of a decedent's estate generally will be presumed not to have acquired beneficial ownership of the securities in the decedent's estate until such time as such executors or administrators are qualified under local law to perform their duties.

(ii)(A) When two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a bank, the group formed thereby shall be deemed to have acquired beneficial ownership, for purposes of section 13(d) and 13(g) of the Act, as of the date of such agreement, of all equity securities of that bank beneficially owned by any such persons.

(B) Notwithstanding the previous paragraph, a group shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group solely by virtue of their concerted actions relating to the purchase of equity securities directly from a bank in a transaction not involving a public offering; provided that:

(*1*) All the members of the group are persons specified in paragraph (h)(3)(ii)(A)(2) of this section;

(*2*) The purchase is in the ordinary course of each member's business and not with the purpose nor with the effect of changing or influencing control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to paragraph (h)(5)(ii) of this section;

(*3*) There is no agreement among or between any members of the group to act together with respect to the bank or its securities except for the purpose of facilitating the specific purpose involved; and

(*4*) The only actions among or between any members of the group with respect to the bank or its securities subsequent to the closing date of the nonpublic offering are those which are necessary to conclude ministerial matters directly related to the completion of the offer or sale of the securities.

(8) The acquisition of securities of a bank by a person who, prior to such acquisition, was a beneficial owner of more than 5 per cent of the outstanding securities of the same class as those acquired shall be exempt from section 13(d) of the Act, provided that:

(i) The acquisition is made pursuant to preemptive subscription rights in an offering made to all holders of securities of the class to which the preemptive subscription rights pertain;

(ii) Such person does not acquire additional securities except through the exercise of his pro rata share of the preemptive subscription rights; and

(iii) The acquisition is duly reported, if required, pursuant to section 16(a) of the Act and the rules and regulations thereunder.

(i) *Quarterly reports.* Every registrant bank shall file a quarterly report in conformity with the requirements of Form F-4 for each fiscal quarter ending after the close of the latest fiscal year for which financial statements were filed in a registration statement, except that no report need be filed for the fiscal quarter which coincides with the end of the fiscal year of the bank. Such reports shall be filed no later than 30 days after the end of such quarterly period, except that the report for any period ending prior to the date on which a class of securities of the bank first becomes effectively registered may be filed not later than 30 days after the effective date of such registration.

(j) *Additional information.* In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

(k) *Information not available.* Information required need be given only insofar as it is known or reasonably available to the bank. If any required information is unknown and not reasonably available to the bank, either because the obtaining thereof would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of another person not affiliated with the bank, the information may be omitted, subject to the following conditions:

(1) The bank shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense together with the sources thereof, and

(2) The bank shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information. No such request need be made, however, to any foreign government, or an agency or instrumentality thereof, if, in the opinion of the bank, such request would be harmful to existing relationships.

(l) *Disclaimer of control.* If the existence of control is open to reasonable doubt in any instance, the bank may disclaim the existence of control and any admission thereof; in such case, however, the bank shall state the material facts pertinent to the possible existence of control.

(m) *Incorporation by reference.* (1) Matter contained in any part of a statement or report, other than exhibits, may be incorporated by reference in answer or partial answer to any item of a [same] statement or report. Matter contained in an exhibit may be so incorporated to the extent permitted in paragraph (n) of this section. A registration statement for an additional class of securities of the bank may incorporate by reference any item contained in a previous registration statement or report.

(2) Material incorporated by reference shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear, or confusing.

(n) *Summaries or outlines of documents.* Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made, in succinct and condensed form, as to the most important provisions. In addition to such statement, the summary or outline may incorporate by reference particular items, sections, or paragraphs of any exhibit and may be qualified in its entirety by such reference. Matter contained in an exhibit may be incorporated by reference in answer to an item only to the extent permitted by this paragraph (n).

(o) *Omission of substantially identical documents.* In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the date of execution, or other details, the bank need file a copy of only one of such documents, with a schedule identifying the documents omitted and setting forth the material details in which such documents differ from the document of which a copy is filed. The Board may at any time in its discretion require the filing of copies of documents so omitted.

(p) *Additional exhibits.* The bank may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

(q) *Incorporation of exhibits by reference.* (1) Any document or part thereof previously filed with the Board pursuant to this part may, subject to the following limitations, be incorporated by reference as an exhibit to any registration statement or report filed with the Board by the same or any other person. Any document or part thereof filed with an exchange pursuant to the Act may be incorporated by reference as an exhibit to any registration statement or report filed with the exchange by the same or any other person.

(2) Any document incorporated by reference pursuant to this paragraph (q) shall be so incorporated only by reference to the specific document and to the prior filing in which it was physically filed, not to another file which incorporates it by reference.

(3) If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the bank shall file with the reference a statement containing the text of any such modification and the date thereof.

(4) No document which has been on file with the Board pursuant to this part for a period of more than 10 years may be incorporated by reference. This limitation shall not, however, apply to a corporate charter or bylaws if such document has not been amended more than twice since such filing.

(r) *Extension of time for furnishing information.* If the furnishing of any information, document, or report at the time it is required to be filed is impracticable, the bank may file with the Board as a separate document an application (1) identifying the information, document, or report in question, (2) stating why the filing thereof at the time required is impracticable, and (3) requesting an extension of time for filing the information, document, or report to a specified date not more than 60 days after the date it would otherwise have to be filed. The application shall be deemed granted unless the Board, within 15 days after receipt thereof, shall enter an order denying the application.

(i) If the extension requested pursuant to this paragraph is necessitated by the inability of any person other than the registrant to furnish any required opinion, information, report or verification, the application shall have attached as an exhibit, a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, information, report or verification.

(ii) If the application pursuant to this paragraph, or the extension of time granted, relates only to a portion of the required information, document or report, the registrant shall file the remaining portion, and the portion filed shall prominently indicate the nature of the omitted portion.

(s) *Number of copies; signatures; binding.* (1) Except where otherwise provided in a particular form, 8 copies of each registration statement and report (including financial statements) and 4 copies of each exhibit and each other document filed as a part thereof, shall be filed with the Board. At least one complete copy of each statement shall be filed with each exchange, if any, on which the securities covered thereby are being registered. At least one copy of each report shall be filed with each exchange, if any, on which the bank has securities registered.

(2) At least one copy of each statement or report filed with the Board and one copy thereof filed with an exchange shall be manually signed. If the statement or report is typewritten, one of the signed copies filed with the Board shall be an original "ribbon" copy. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power or other authority shall also be filed with the statement or report.

(3) Each copy of a statement or report filed with the Board or with an exchange shall be bound in one or more parts. Copies filed with the Board shall be bound without stiff covers. The statement or report shall be bound on the left side in such a manner as to leave the reading matter legible.

(t) *Requirements as to paper, printing, and language.* (1) Statements and reports shall be filed on good quality, unglazed, white paper 8½ × 13 inches in size, insofar as practicable. Tables, charts, maps, and financial statements may, however, be on larger paper if folded to that size.

(2) The statement or report and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed, photocopied, or typewritten. The statement or report or any portion thereof may, however, be prepared by any similar process that, in

the opinion of the Board, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable, and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(3) The body of all printed statements and reports shall be in roman type at least as large as 10-point modern type. To the extent necessary for convenient presentation, however, financial statements and other statistical or tabular data and the notes thereto may be in type at least as large as 8-point modern type. All type shall be leaded at least 2 points.

(4) Statements and reports shall be in English. If any exhibit or other paper or document filed with a statement or report is in a foreign language, it shall be accompanied by a translation into English.

(u) *Preparation of statement or report.* Each statement and report shall contain the numbers and captions of all items of the appropriate form, but the text of the items may be omitted provided the answers thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of his referring to the text of the items or instructions thereto. Where any item requires information to be given in tabular form, such information shall be given in substantially the tabular form specified in the item. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable, or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(v) *Riders; inserts.* Riders shall not be used. If the statement or report is typed on a printed form, and the space provided for the answer to any given item is insufficient, reference shall be made in such space to a full insert page or pages on which the item number and caption and the complete answer are given.

(w) *Amendments.* All amendments shall comply with all pertinent requirements applicable to statements and reports. Amendments shall be filed separately for each separate statement or report amended. Amendments to a statement may be filed either before or after registration becomes effective.

(x) *Title of securities.* Wherever the title of securities is required to be stated, information shall be given that will indicate the type and general character of the securities, including:

(1) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or noncumulative; a brief indication of the preference, if any; and if convertible, a statement to that effect.

(2) In the case of funded debt, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1970 to 1980"; if payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, a statement to that effect.

(3) In the case of any other kind of security, appropriate information of comparable character.

(y) *Interpretation of requirements.* Unless the context clearly shows otherwise,

(1) The forms require information only as to the bank.

(2) Whenever any fixed period of time in the past is indicated, such period shall be computed from the date of filing.

(3) Whenever words relate to the future, they have reference solely to present intention.

(4) Any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or offices.

(z) *When securities are deemed to be registered.* A class of securities with respect to which a registration statement has been filed pursuant to section 12 of the Act shall be deemed to be registered for the purposes of sections 13, 14, and 16 of the Act and this part only when such registration statement has become effective as provided in section 12, and securities of said class shall not be subject to sections 13, 14, and 16 of the Act until such registration statement has become effective as provided in section 12.

[40 FR 50458, Oct. 30, 1975, as amended at 43 FR 60550, Dec. 28, 1978; 44 FR 67961, Nov. 28, 1979]

§ 206.5 Proxy statements and other solicitations under Section 14 of the Act.

(a) *Requirement of statement.* No solicitation of a proxy with respect to a security of a bank registered pursuant to section 12 of the Act shall be made unless each person solicited is concurrently furnished, or has previously been furnished, with a written proxy statement containing the information required by Form F-5. If any bank having such a security outstanding fails to solicit proxies from the holders of any such security in such a manner as to require the furnishing of such a proxy statement, such bank shall transmit to all holders of record of such security a statement containing the information required by Form F-5. The "information statement" required by the preceding sentence shall be transmitted (1) at least 20 calendar days prior to any annual or other meeting of the holders of such security at which such holders are entitled to vote, or (2) in the case of corporate action taken with the written authorization or consent of security holders, at least 20 days prior to the earliest date on which the corporate action may be taken. A proxy statement or an "information statement" required by this paragraph is hereinafter sometimes referred to as a "Statement".

(b) *Exceptions.* The requirements of this § 206.5 shall not apply to the following:

(1) Any solicitation made otherwise than on behalf of the management of the bank where the total number of persons solicited is not more than 10.

(2) Any solicitation by a person in respect to securities carried in his name or in the name of his nominee (otherwise than as voting trustee) or held in his custody, if such person:

(i) Receives no commission or remuneration for such solicitation, directly or indirectly, other than reimbursement of reasonable expenses;

(ii) Furnishes promptly to the person solicited a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who will furnish copies thereof for such purpose and who will, if requested, defray the reasonable expenses to be incurred in forwarding such material; and

(iii) In addition, does no more than (A) impartially instruct the person solicited to forward a proxy to the person, if any, to whom the person solicited desires to give a proxy, or (B) impartially request from the person solicited instructions as to the authority to be conferred by the proxy and state that a proxy will be given if no instructions are received by a certain date.

(3) Any solicitation by a person with respect to securities of which he is the beneficial owner.

(4) Any solicitation through the medium of a newspaper advertisement that informs security holders of a source from which they may obtain copies of a proxy statement, form of proxy, and any other soliciting material and does no more than (i) name the bank; (ii) state the reason for the advertisement; and (iii) identify the proposal or proposals to be acted upon by security holders.

(5) The furnishing of proxy voting advice by any person (the "advisor") to any other person with whom the advisor had a business relationship, if:

(i) The advisor renders financial advice in the ordinary course of his business;

(ii) The advisor discloses to the recipient of the advice any significant relationship with the bank or any of its affiliates, or a shareholder proponent of the matter on which advice is given, as well as any material interest of the advisor in such matter;

(iii) The advisor receives no special commission or remuneration for furnishing the proxy voting advice from any person other than a recipient of the advice and other persons who receive similar advice under this subsection; and

(iv) The proxy voting advice is not furnished on behalf of any person soliciting proxies or on behalf of a participant in an election subject to the provisions of paragraph (i) of this section.

NOTE: The solicitations excepted by paragraphs (b)(1) and (b)(5) remain subject to the prohibitions against false and misleading statements in paragraph (h) of this section.

(c) *Annual report to security holders to accompany statements.* (1) Any Statement furnished on behalf of the bank that relates to an annual meeting of security holders at which directors are to be elected shall be accompanied or preceded by an annual report to such security holders containing such financial statements for the last 2 fiscal years as will, in the opinion of the bank, adequately reflect the financial position of the bank at the end of each such year and the results of its operations for each such year. The financial statements included in the annual report may omit details or summarize information if such statements, considered as a whole in the light of other information contained in the report and in the light of the financial statements of the bank filed or to be filed with the Board, will not by such procedure omit any material information necessary to a fair presentation or to make the financial statements not misleading under the circumstances. Subject to the foregoing requirements with respect to financial statements, the annual report to security holders may be in any form deemed suitable by the bank and the information required by paragraphs (c)(1) (i) to (iv) of this section may be presented in an appendix or other separate section of the report, provided that the attention of security holders is called to such presentation.

(i) The report shall include a summary of the bank's operations containing the information required by Item 4 of Form F-2 except for the reconciliations, exhibits and supplemental information thereto.

(ii) The report shall contain a brief description of the operations done by the bank and its subsidiaries during the most recent fiscal year.

(iii) The report shall identify each of the bank's directors and officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed.

(iv) The report shall identify the principal market, if any, in which securities of any class entitled to vote at the meeting are traded, and shall state the high and low sales prices for such securities (or, in the absence of such information, the range of bid and asked quotation) and the dividends paid on such securities for each quarterly period during the bank's two most recent fiscal years. If bank securities are inactively traded, the report shall so state and shall indicate the range of sales prices known to management for the periods specified above and the source(s) of such information.

(2) Bank's Statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person solicited, on the written request of any such person, a copy of the bank's annual report on Form F-2 including the financial statements and the schedules thereto, required to be filed with the Board pursuant to § 206.4 of this part for the bank's most recent fiscal year, and shall indicate the name and address of the person to whom such a written request is to be directed. In the discretion of management, a bank need not undertake to furnish without charge copies of all exhibits to its Form F-2 provided that the copy of the annual report on Form F-2 furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the bank will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the bank's reasonable expenses in furnishing such exhibit.

NOTE: Pursuant to the undertaking required by the paragraph (c)(2) of this section, a bank shall furnish a copy of its annual report on Form F-2 to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the annual meeting of the bank's security holders, the person making the request was a beneficial owner of securities entitled to vote at such meeting.

(3) If the bank knows that securities of any class entitled to vote at a meeting with respect to which the bank intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, bank, or voting trustee, or their nominees, the bank shall inquire of such record holder at least 10 days prior to the record date for the meeting of security holders (or at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown), whether other persons are the beneficial owners of such securities and, if so, the number of copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply such material to beneficial owners. The bank shall supply such record holder in a timely manner with additional copies in such quantities, assembled in such form and at such a place, as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities so held and shall, upon the request of such record holder, pay its reasonable expenses for completing the mailing of such material to security holders to whom the material is sent.

(4) If the bank's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act, a bank shall make appropriate inquiry of the agency and thereafter of the participants in such agency who may hold on behalf of a beneficial owner, and shall comply with paragraph (c)(3) of this section with respect to any such participant.

This paragraph (c) shall not apply, however, to solicitations made on behalf of management before the financial statements are available if solicitation is being made at the time in opposition to the management and if the management's Statement includes an undertaking in bold-face type to furnish such annual report to all persons being solicited at least 20 days before the date of the meeting.

NOTES: 1. To reflect adequately the financial position and results of operations of a bank in its annual report to security holders, the financial presentation shall include, but not necessarily be limited to, the following:

(a) Comparative statements of condition at the end of each of the last 2 fiscal years.

(b) Comparative statements of income in a form providing for the determination of "net income" for each fiscal year and per share earnings and dividend data.

(c) Comparative statements of changes in capital accounts for each fiscal year similar in form to Form F-9C.

(d) Comparative statements of changes in financial position for each fiscal year for which a statement of income is furnished.

(e) A comparative reconciliation of the "Allowance for Possible Loan Losses" account similar in form to Schedule VII, Form F-9D, and a comparative loan classification summary similar in form to Schedule III, of Form F-9D.

(f) Supplemental notes to financial statements to the extent necessary to furnish a fair financial presentation. Such notes should include the aggregate market value as at the balance sheet date for each category of investment securities reported on the balance sheet, and other information required to be furnished in notes to financial statements included in the bank's Form F-2 Annual Report.

2. The financial statements should be prepared on a consolidated basis to the extent required by § 206.7(d). Any difference from the principles of consolidation or other accounting principles or practices, or methods of applying accounting principles or practices, applicable to the financial statements of the bank filed or to be filed with the Board, which have a material effect on the financial position or results of operations of the bank, shall be noted and the effect thereof reconciled or explained in the [financial statements or the notes thereto in the] annual report to security holders.

3. When financial statements included in the annual report (Form F-2) filed, or proposed to be filed, with the Board are accompanied by an opinion of an independent public accountant, the financial statements in the annual report to security holders should also be accompanied by an opinion of such independent public accountant.

4. The requirement for sending an annual report to each person being solicited will be satisfied with respect to persons having the same address by sending at least one report to a holder of record at that address provided (i) that management has reasonable cause to believe that the record holder to

whom the report is sent is the "beneficial owner" (see definition in § 206.2(jj)) of securities registered in the name of such person in other capacities or in the name of other persons at such address, or (ii) the security holders at such address consent thereto in writing. Nothing herein shall be deemed to relieve any person so consenting of any obligation to obtain or send such annual report to any other person.

(5) Eight copies of each annual report sent to security holders pursuant to this paragraph (c) shall be sent to the Board not later than (i) the date on which such report is first sent or given to security holders, or (ii) the date on which preliminary copies of the bank Statement are filed with the Board pursuant to paragraph (f) of this section, whichever date is later. Such annual report is not deemed to be "soliciting material"or to be "filed" with the Board or otherwise subject to this § 206.5 or the liabilities of section 18 of the Act, except to the extent that the bank specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement by reference.

(d) *Requirements as to proxy.* (1) the form of proxy (i) shall indicate in bold-face type whether or not the proxy is solicited on behalf of the bank's board of directors or, if provided other than by a majority of the board of directors, shall indicate in bold-face type the identity of the persons on whose behalf the solicitation is made, (ii) shall provide a specifically designated blank space for dating the proxy, and (iii) shall identify clearly and impartially each matter or group of related matters intended to be acted upon whether proposed by the bank or by security holders. No reference need be made, however, to matters as to which discretionary authority is conferred under paragraph (d)(3) of this section.

(2)(i) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to, each matter or group of related matters referred to therein as intended to be acted upon, other than elections to office. A proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by the security holder if the form of proxy states in Bold-faced type how the shares represented by the proxy are intended to be voted in each such case.

(ii) A form of proxy which provides for the election of directors shall set forth the names of persons nominated for election as directors. Such form of proxy shall clearly provide any of the following means for security holders to withhold authority to vote for each nominee:

(A) A box opposite the name of each nominee which may be marked to indicate that authority to vote for such nominee is withheld; or

(B) An instruction in bold-face type which indicates that the security holder may withhold authority to vote for any nominee by lining through or otherwise striking out the name of any nominee; or

(C) Designated blank spaces in which the shareholder may enter the names of nominees with respect to whom the shareholder chooses to withhold authority to vote; or

(D) Any other similar means: *Provided,* That clear instructions are furnished indicating how the shareholder may withhold authority to vote for any nominee.

(iii) Such form of proxy also may provide a means for the security holder to grant authority to vote for the nominees set forth, as a group: *Provided,* That there is a similar means for the security holder to withhold authority to vote for such group of nominees. Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the election of any nominee shall be deemed to grant such authority: *Provided,* That the form of proxy so states in bold-face type.

Instructions. 1. Paragraph (ii) does not apply in the case of a merger, consolidation or other plan if the election of directors is an integral part of the plan.

2. If applicable State law gives legal effect to votes cast against a nominee, then in lieu of, or in addition to, providing a means for security holders or withhold authority to vote, the bank should provide a similar

means for security holders to vote against each nominee.

(3) A form of proxy which provides both for the election of directors and for action on other specified matters shall be prepared so as clearly to provide, by a box or otherwise, means by which the security holder may withhold authority to vote for the election of directors. Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the election of directors shall be deemed to grant such authority, provided the form of proxy so states in bold-face type. This paragraph (d)(3) does not apply (i) in the case of a merger, consolidation, or other plan if the election of directors is an integral part of the plan and is not to be separately voted upon or (ii) if the only matters to be acted upon are the election of directors and the election, selection, or approval of other persons such as clerks or auditors.

(4) A proxy may confer discretionary authority to vote with respect to any of the following matters:

(i) Matters that the persons making the solicitation do not know, within a reasonable time before the solicitation, are to be presented at the meeting, if a specific statement to that effect is made in the proxy statement or form of proxy;

(ii) Approval of the minutes of the prior meeting if such approval does not amount to ratification of the action taken at that meeting;

(iii) The election of any person to any office for which a bona fide nominee is named in the proxy statement and such nominee is unable to serve or for good cause refuses to serve;

(iv) Any proposal omitted from the proxy statement and form of proxy pursuant to paragraph (k) of this section;

(v) Matters incident to the conduct of the meeting.

(5) No proxy shall confer authority (i) to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement, or (ii) to vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders. A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected.

(6) The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the shares represented by the proxy will be voted and that where the person solicited specifies by means of a ballot provided pursuant to paragraph (d)(2) of this section a choice with respect to any matters to be acted upon, the shares will be voted in accordance with the specifications so made.

(e) *Presentation of information in Statement.* (1) The information included in the Statement shall be clearly presented and the statements made shall be divided into groups according to subject matter and the various groups of statements shall be preceded by appropriate headings. The order of items in the form need not be followed. Where practicable and appropriate, the information shall be presented in tabular form. All amounts shall be stated in figures. Information required by more than one applicable item need not be repeated. No statement need be made in response to any item that is inapplicable.

(2) Any information required to be included in the Statement as to terms of securities or other subject matter that from a standpoint of practical necessity must be determined in the future may be stated in terms of present knowledge and intention. To the extent practicable, the authority to be conferred concerning each such matter shall be confined within limits reasonably related to the need for discretionary authority. Subject to the foregoing information that is not known to the persons on whose behalf the solicitation is to be made and is not reasonably within the power of such persons to ascertain or procure may be omitted, if a brief statement of the circumstances rendering such information unavailable is made.

(3) There may be omitted from a proxy statement any information contained in any other proxy soliciting

material that has been furnished to each person solicited in connection with the same meeting or subject matter if a clear reference is made to the particular document containing such information.

(4) All printed Statements shall be set in roman type at least as large as 10-point modern type except that, to the extent necessary for convenient presentation, financial statements and other statistical or tabular matter may be set in roman type at least as large as 8-point modern type. All type shall be leaded at least 2 points.

(5) All proxy statements shall disclose on the first page thereof the complete mailing address, including ZIP code, of the principal executive offices of bank and the approximate date on which the proxy statement and form of proxy are first sent or given to security holders.

(6) All proxy statements shall disclose, under an appropriate caption, the date by which proposals of security holders intended to be presented at the next annual meeting must be received by the bank for inclusion in the bank's proxy statement and form of proxy relating to that meeting, such date to be calculated in accordance with the provisions of paragraph (k)(iii)(A) of this section. If the date of the next annual meeting is subsequently advanced by more than 30 calendar days or delayed by more than 90 calendar days from the date of the annual meeting to which the proxy statement relates, the bank shall, in a timely manner, inform security holders of such change, and the date by which proposals of security holders must be received, by any means reasonably calculated to so inform them.

(f) *Material required to be filed.* (1) Three preliminary copies of each Statement, form of proxy, and other items of soliciting material to be furnished to security holders concurrently therewith, shall be filed with the Board by management or any other person making a solicitation subject to this § 206.5 at least 10 calendar days (or 15 calendar days in the case of other than routine meetings, as defined below) prior to the date such item is first sent or given to any security holders, or such shorter period prior to that date as may be authorized. For the purposes of this paragraph (f)(1) of this section, a routine meeting means a meeting with respect to which no one is soliciting proxies subject to this § 206.5 other than on behalf of management and at which management intends to present no matters other than the election of directors, election of inspectors of election, and other recurring matters. In the absence of actual knowledge to the contrary, management may assume that no other such solicitation of the bank's security holders is being made. In cases of annual meetings, one additional preliminary copy of the Statement, the form of proxy, and any other soliciting material, marked to show changes from the material sent or given to security holders with respect to the preceding annual meeting shall be filed with the Board.

(2) Three preliminary copies of any additional soliciting material, relating to the same meeting or subject matter, furnished to security holders subsequent to the proxy statement shall be filed with the Board at least two days (exclusive of Saturdays, Sundays, and holidays) prior to the date copies of such material are first sent or given to security holders, or such shorter period prior to such date as may be authorized upon a showing of good cause therefor.

(3) Eight copies of each statement, form of proxy, and other items of soliciting material, in the form in which such material is furnished to security holders, shall be filed with, or mailed for filing to, the Board not later than the date such material is first sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each exchange upon which any security of the bank is listed.

NOTE: The definitive material filed with the Board should be accompanied by a letter over the signature of an officer of bank or its counsel indicating any material changes which have been made therein, other than those made in response to the staff's comments.

(4) If the solicitation is to be made in whole or in part by personal solicitation, three copies of all written in-

structions or other material that discusses or reviews, or comments upon the merits of, any matter to be acted upon, and is furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation, shall be filed with the Board by the person on whose behalf the solicitation is made at least five days prior to the date copies of such material are first sent or given to such individuals, or such shorter period prior to that date as may be authorized upon a showing of good cause therefor.

(5) All copies of material filed pursuant to paragraph (f) (1) or (2) of this section shall be clearly marked "Preliminary Copies" and shall be for the information of the Board only and shall not be deemed available for public inspection before definitive material has been filed with the Board, except that such material may be disclosed to any department or agency of the United States Government and to the Congress and the Board may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Board. All material filed pursuant to paragraphs (f) (1), (2), or (3) of this section shall be accompanied by a statement of the date upon which definitive material filed pursuant to paragraph (f)(3) of this section is intended to be, or has been, released to security holders. All material filed pursuant to paragraph (f)(4) of this section shall be accompained by a statement of the date on which copies thereof are intended to be released to the individuals who will make the actual solicitation.

(6) Copies of replies to inquiries for security holders requesting further information and copies of communications that do no more than request that forms of proxy theretofore solicited be signed, dated, and returned need not be filed pursuant to this paragraph (f).

(7) Notwithstanding the provisions of paragraphs (f)(1), (f)(2), and (i)(5) of this section, copies of soliciting material in the form of speeches, press releases, and radio or television scripts may, but need not, be filed with the Board prior to use or publication. Definitive copies, however, shall be filed with or mailed for filing to the Board as required by paragraph (f)(3) of this section not later than the date such material is used or published. The provisions of paragraphs (f)(1), (f)(2), and (i)(5) of this section shall apply, however, to any reprints or reproductions of all or any part of such material.

(8) Where any Statement, form of proxy, or other material filed pursuant to this paragraph (f) is revised, two of the copies of such revised material filed pursuant to paragraph (f)(3) of this section shall be marked to indicate clearly the changes. If the revision alters the text of the material, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

(9) The date that proxy material is "filed" with the Board for purposes of paragraphs (f) (1), (2), and (4) of this section is the date of receipt of the material by the Board, not the date of mailing to the Board. In computing the advance filing period for preliminary copies of proxy soliciting material referred to in such paragraphs, the filing date of the preliminary material is to be counted as the first day of the period and definitive material should not be planned to be mailed or distributed to security holders until after the expiration of such period. Where additional time is required for final printing after receipt of comments, the preliminary proxy material should be filed as early as possible prior to the intended mailing date.

(10) Where preliminary copies of material are filed with the Board pursuant to this subsection, the printing of definitive copies for distribution to security holders should be deferred until comments of the Board's staff have been received and considered.

(g) *Mailing communications for security holders.* If the bank has made or intends to make any proxy solicitation subject to this § 206.5, the bank shall perform such of the following acts as may be requested in writing with respect to the same subject matter or meeting by any security holder who is entitled to vote on such matter or to vote at such meeting and who shall first defray the reasonable expenses to be incurred by the bank in the performance of the act or acts requested:

(1) The bank shall mail or otherwise furnish to such security holder the following information as promptly as practicable after the receipt of such request:

(i) A statement of the approximate number of holders of record of any class of securities, any of the holders of which have been or are to be solicited on behalf of the bank, or any group of such holders that the security holder shall designate;

(ii) If the bank has made or intends to make, through bankers, brokers, or other persons, any solicitation of the beneficial owners of securities of any class, a statement of the approximate number of such beneficial owners, or any group of such owners that the security holder shall designate;

(iii) An estimate of the cost of mailing a specified proxy statement, form of proxy, or other communication to such holders, including insofar as known or reasonably available, the estimated handling and mailing costs of the banders, brokers, or other persons specified in paragraph (g)(1)(ii) of this section.

(2)(i) Copies of any proxy statement, form of proxy, or other communication furnished by the security holder shall be mailed by the bank to such of the holders of record specified in paragraph (g)(1)(i) of this section as the security holder shall designate. The bank shall also mail to each banker, broker, or other persons specified in paragraph (g)(1)(ii) of this section, a sufficient number of copies of such proxy statement, form of proxy, or other communication as will enable the banker, broker, or other person to furnish a copy thereof to each beneficial owner solicited or to be solicited through him;

(ii) Any such material that is furnished by the security holder shall be mailed with reasonable promptness by the bank after receipt of a tender of the material to be mailed, of envelopes or other containers therefor, of postage or payment for postage, and of evidence that such material has been filed with the Board pursuant to paragraph (f) of this section. The bank need not, however, mail any such material that relates to any matter to be acted upon at an annual meeting of security holders prior to the earlier of (*a*) a day corresponding to the first date on which the bank's proxy soliciting material was released to security holders in connection with the last annual meeting of security holders, or (*b*) the first day on which solicitation is made on behalf of management. With respect to any such material that relates to any matter to be acted upon by security holders otherwise than at an annual meeting, such material need not be mailed prior to the first day on which solicitation is made on behalf of the bank;

(iii) The bank shall be responsible for such proxy statement, form of proxy, or other communication.

(3) In lieu of performing the acts specified above, the bank may, at its option, furnish promptly to such security holder a reasonably current list of the names and addresses of such of the holders of record specified in paragraph (g)(1)(i) of this section as the security holder shall designate, and a list of the names and addresses of the bankers, brokers, or other persons specified in paragraph (g)(1)(ii) of this section as the security holder shall designate together with a statement of the approximate number of beneficial owners solicited or to be solicited through each such banker, broker, or other person and a schedule of the handling and mailing costs of each such banker, broker, or other person, if such schedule has been supplied to the bank. The foregoing information shall be furnished promptly upon the request of the security holder or at daily or other reasonable intervals as it becomes available to the bank.

(h) *False or misleading statements.* (1) No solicitation or communication subject to this section shall be made by means of any Statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or that omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter that has become false or misleading. Depending upon particular circumstances, the following may be misleading within the meaning of this paragraph: Predictions as to specific future market values; material that directly or indirectly impugns character, integrity, or personal reputation, or directly or indirectly makes charges concerning improper, illegal, or immoral conduct or associations, without factual foundation; failure so to identify a Statement, form of proxy, and other soliciting material as clearly to distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter; claims made prior to a meeting regarding the results of a solicitation.

(2) The fact that a proxy statement, form of proxy, or other soliciting material has been filed with or reviewed by the Board or its staff shall not be deemed a finding by the Board that such material is accurate or complete or not false or misleading, or that the Board has passed upon the merits of or approved any statement therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

(l) *Special provisions applicable to election contests*—(1) *Solicitations to which this paragraph applies.* This paragraph (l) applies to any solicitation subject to this § 206.5 by any person or group of persons for the purpose of opposing a solicitation subject to this section by any other person or group of persons with respect to the election or removal of directors at any annual or special meeting of security holders.

(2) *Participant defined.* (i) For purposes of this paragraph (l) the terms "participant" and "participant in a solicitation" include the following:

(A) The bank;

(B) Any director of the bank, and any nominee for whose election as a director proxies are solicited;

(C) Any committee or group that solicits proxies, any member of such committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons, directly or indirectly, takes the initiative in organizing, directing, or financing any such committee or group;

(D) Any person who finances or joins with another to finance the solicitation of proxies, except persons who contribute not more than $500 and who are not otherwise participants;

(E) Any person who lends money or furnishes credit or enters into any other arrangements, pursuant to any contract or understanding with a participant, for the purpose of financing or otherwise inducing the purchase, sale, holding, or voting of securities of the bank by any participant or other person, in support of or in opposition to a participant, except a [member or nonmember] bank, broker, or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant;

(F) Any other person who solicits proxies.

(ii) Such terms do not include:

(A) Any person or organization retained or employed by a participant to solicit security holders and whose activities are limited to the performance of his or its duties in the course of such retention or employment, or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties;

(B) Any person employed by a participant in the capacity of attorney, accountant, or advertising, public relations, or financial adviser, and whose activities are limited to the performance of his duties in the course of such employment;

(C) Any person regularly employed as an officer or employee of the bank or any of its subsidiaries who is not otherwise a participant; or

(D) Any officer or director of, or any person regularly employed by, any other participant, if such officer, director, or employee is not otherwise a participant.

(3) *Filing of information required by Form F-6.* (i) No solicitation subject to this paragraph (l) shall be made by any person other than the bank unless at least five business days prior there-

to, or such shorter period as the Board may authorize upon a showing of good cause therefor, there has been filed with the Board and with each exchange upon which any security of the bank is listed, by or on behalf of each participant in such solicitation, a statement in duplicate containing the information specified by Form F-6.

(ii) Within five business days after a solicitation subject to this paragraph (i) is made by the bank, or such longer period as the Board may authorize upon a showing of good cause therefor, there shall be filed with the Board and with each exchange upon which any security of the bank is listed, by or on behalf of each participant in such solicitation, other than the bank, a statement in duplicate containing the information specified by Form F-6.

(iii) If any solicitation on behalf of the bank or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation subject to this paragraph (i) in opposition thereto, a statement in duplicate containing the information specified in Form F-6 shall be filed by or on behalf of each participant in such prior solicitation, other than the bank, as soon as reasonably practicable after the commencement of the solicitation in opposition thereto, with the Board and with each exchange on which any security of the bank is listed.

(iv) If, subsequent to the filing of the statements required by paragraphs (i)(3) (i), (ii), and (iii) of this section, additional persons become participants in a solicitation subject to paragraph (i)(3)(i) of this section, there shall be filed, with the Board and each appropriate exchange, by or on behalf of each such person a statement in duplicate containing the information specified by Form F-6, within three business days after such person becomes a participant, or such longer period as the Board may authorize upon a showing of good cause therefor.

(v) If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to such statement shall be filed promptly with the Board and each appropriate exchange.

(vi) Each statement and amendment thereto filed pursuant to this paragraph (i) shall be part of the official public files of the Board and shall be deemed a communication subject to the provisions of paragraph (h) of this section.

(4) *Solicitations prior to furnishing required statement.* Notwithstanding the provisions of § 206.5(a), a solicitation subject to paragraph (i) of this section may be made prior to furnishing security holders a written statement containing the information specified in Form F-5 with respect to such solicitation if (i) the statements required by paragraph (i)(3) are filed by or on behalf of each participant in such solicitation; (ii) no form of proxy is furnished to security holders prior to the time the statement is furnished to security holders, except that paragraph (i)(4)(ii) of this section shall not apply where a statement then meeting the requirements of Form F-5 has been furnished to security holders by or on behalf of the person making the solicitation; (iii) at least the information specified in Items 2(a) and 3(a) of the statement required by paragraph (i)(3) of this section to be filed by each participant, or an appropriate summary thereof, is included in each communication sent or given to security holders in connection with the solicitation; and (iv) a written statement containing the information specified in Form F-5 with respect to a solicitation is sent or given security holders at the earliest practicable date.

(5) *Solicitations prior to furnishing required statement—Filing requirements.* Three copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the proxy statement required by paragraph (a) of this section shall be filed with the Board in preliminary form, at least five business days prior to the date copies of such material are first sent or given to security holders, or such shorter period as the Board may authorize upon a showing of good cause therefor.

(6) *Application of this paragraph to annual report.* Notwithstanding the provisions of paragraph (c) of this sec-

tion, three copies of any portion of the annual report referred to in that paragraph that comments upon or refers to any solicitation subject to this paragraph (i), or to any participant in any such solicitation, other than the solicitation by the bank shall be filed with the Board as proxy material subject to this § 206.5. Such portion of the annual report shall be filed with the Board in preliminary form at least five business days prior to the date copies of the report are first sent or given to security holders.

(7) *Application of paragraph (f).* The provisions of paragraphs (f) (3), (4), (5), (6), and (7) of this section shall apply, to the extent pertinent, to soliciting material subject to subparagraphs (5) and (6) of this paragraph (i).

(8) *Use of reprints or reproductions.* In any solicitations subject to paragraph (i) of this section, soliciting material that includes, in whole or in part, any reprints or reproductions of any previously published material shall:

(i) State the name of the author and publication, the date of prior publication, and identify any person who is quoted without being named in the previously published material.

(ii) Except in the case of a public, official document or statement, state whether or not the consent of the author and publisher has been obtained to the use of the previously published material as proxy soliciting material.

(iii) If any participant using the previously published material, or anyone on his behalf, paid, directly or indirectly, for the preparation or prior publication of the previously published material, or has made or proposed to make any payments or given any other consideration in connection with the publication or republication of such material, state the circumstances.

(j) *Prohibition of certain solicitations.* No person making a solicitation that is subject to this § 206.5 shall solicit (1) any undated or postdated proxy; or (2) any proxy that provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder.

(k) *Proposals of security holders.* (1) If any security holder of a bank notifies the bank of his intention to present a proposal for action at a forthcoming meeting of the bank's security holders, the bank shall set forth the proposal in its proxy statement and identify it in its form of proxy and provide means by which security holders can make the specification required by paragraph (d)(2) of this section. If the bank issues an information statement pursuant to paragraph (a) of this section, it shall identify the proposal and indicate the disposition proposed to be made of the proposal by the management at the meeting. The bank, however need not include a proposal in its information statement if such proposal is submitted less than 60 days in advance of a day corresponding to the date of mailing a proxy statement or information statement in connection with the last annual meeting of security holders. Notwithstanding the foregoing, the bank shall not be required to include the proposal in its proxy statement or form of proxy unless the security holder (hereinafter, the "proponent") has complied with the requirements of this paragraph and paragraphs (k)(2) and (3) of this section:

(i) *Eligibility.* At the time he submits the proposal, the proponent shall be a record or beneficial owner of a security entitled to be voted at the meeting on his proposal, and he shall continue to own such security through the date on which the meeting is held. If the bank requests documentary support for a proponent's claim that he is a beneficial owner of a voting security of the issuer, the proponent shall furnish appropriate documentation within 10 business days after receiving the request. In the event the bank includes the proponent's proposal in its proxy soliciting materials for the meeting and the proponent fails to comply with the requirement that he continuously be a voting security holder through the meeting date, the bank shall not be required to include any proposal submitted by the proponent in its proxy soliciting materials for any meeting held in the following two calendar years.

(ii) *Notice.* The proponent shall notify the bank in writing of his intention to appear personally at the meeting to present his proposal for action. The proponent shall furnish the requisite notice at the time he submits the proposal, except that if he was unaware of the notice requirement at that time he shall comply with it within 10 business days after being informed of it by the bank. If the proponent, after furnishing in good faith the notice required by this provision, subsequently determines that he will be unable to appear personally at the meeting, he shall arrange to have another security holder of the issuer present his proposal on his behalf at the meeting. In the event the proponent or his proxy fails, without good cause, to present the proposal for action at the meeting, the bank shall not be required to include any proposals submitted by the proponent in its proxy soliciting materials for any meeting held in the following two calendar years.

(iii) *Timeliness.* The proponent shall submit his proposal sufficiently far in advance of the meeting so that it is received by the bank within the following time periods:

(A) *Annual meetings.* A proposal to be presented at an annual meeting shall be received by the management at the issuer's principal executive offices not less than 90 days in advance of a date corresponding to the date set forth on the bank's proxy statement released to security holders in connection with the previous year's annual meeting of security holders, except that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date of the previous year's annual meeting a proposal shall be received by the bank in reasonable time before the solicitation is made.

(B) *Other meetings.* A proposal to be present at any meeting other than an annual meeting shall be received at a reasonable time before the solicitation is made.

NOTE: In order to curtail controversy as to the date on which a proposal was received by the bank, it is suggested that proponents submit their proposals by Certified Mail-Return Receipt Requested.

(iv) *Number and length of proposals.* The proponent may submit a maximum of two proposals of not more than 300 words each for inclusions in the management's proxy materials for a meeting of security holders. If the proponent fails to comply with either of these requirements, or if he fails to comply with the 200-word limit on supporting statements mentioned in paragraph (k)(2) of this section, he shall be provided the opportunity by the bank to reduce, within 10 business days, the items submitted by him to the limits required by this rule.

(2) If the bank opposes any proposal received from a proponent, it shall also, at the request of the proponent, include in its proxy statement a statement of the proponent of not more than 200 words in support of the proposal, which statement shall not include the name and address of the proponent. The statement and request of the proponent shall be furnished to the bank at the time that the proposal is furnished, and the bank shall not be responsible for such statement. The proxy statement shall also include either the name and address of the proponent or a statement that such information will be furnished by the issuer or by the Board to any person, orally or in writing as requested, promptly upon the receipt of any oral or written request therefor. If the name and address of the proponent are omitted from the proxy statement, they shall be furnished to the Board at the time of filing the bank's preliminary proxy material pursuant to paragraph (f)(1) of this section.

(3) The bank may omit a proposal and any statement in support thereof from its proxy statement and form of proxy under any of the following circumstances:

(i) If the proposal is, under the laws of the issuer's domicile, not a proper subject for action by security holders;

NOTE: A proposal that may be improper under the applicable State law when framed as a mandate or directive may be proper when framed as a recommendation or request.

(ii) If the proposal would, if implemented, require the issuer to violate any State law or Federal law of the United States, or any law of any foreign jurisdiction, to which the issuer is subject, except that this provision shall not apply with respect to any foreign law compliance with which would be violative of any State law or Federal law of the United States;

(iii) If the proposal or the supporting statement is contrary to any of the Board's proxy rules and regulations, including paragraph (h) of this section which prohibits false or misleading statements in proxy soliciting materials;

(iv) If the proposal relates to the enforcement of a personal claim or the redress of a personal grievance against the bank, or any other person;

(v) If the proposal deals with a matter that is not significantly related to the bank's business;

(vi) If the proposal deals with a matter that is beyond the bank's power to effectuate;

(vii) If the proposal deals with a matter relating to the conduct of the ordinary business operations of the bank;

(viii) If the proposal relates to an election to office;

(ix) If the proposal is counter to a proposal to be submitted by the bank at the meeting;

(x) If the proposal has been rendered moot;

(xi) If the proposal is substantially duplicative of a proposal previously submitted to the management by another proponent, which proposal will be included in the bank's proxy materials for the meeting;

(xii) If substantially the same proposal has previously been submitted to security holders in the bank's proxy statement and form of proxy relating to any annual or special meeting of security holders held within the preceding five calendar years, it may be omitted from the bank's proxy materials relating to any meeting of security holders held within three calendar years after the latest such previous submission: *Provided*, That—

(A) If the proposal was submitted at only one meeting during such preceding period, it received less than 3 per cent of the total number of votes cast in regard thereto; or

(B) If the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than 6 per cent of the total number of votes cast in regard thereto; or

(C) If the proposal was submitted at three or more meetings during such preceding period, it received at the time of its latest submission less than 10 per cent of the total number of votes cast in regard thereto; and

(xiii) If the proposal relates to specific amounts of cash or stock dividends.

(4) Whenever the bank asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the Board, not later than 50 days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (f)(1) of this section, or such shorter period prior to such date as the Board or its staff may permit, five copies of the following items: (i) The proposal; (ii) any statement in support thereof as received from the proponent; (iii) a statement of the reasons why the bank deems such omission to be proper in the particular case; and (iv) where such reasons are based on matters of law, a supporting opinion of counsel. The bank shall at the same time, if it has not already done so, notify the proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him a copy of the statement of reasons why the bank deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

(5) If management intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall, not later than ten calendar days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (f) of this section or, in the event that the proposal must be revised in order to be included, not later than five calendar

days after receipt by the bank of the revised proposal, promptly forward to the proponent a copy of the statement in opposition to the proposal. In the event the proponent believes that the statement in opposition contains materially false or misleading statements within the meaning of paragraph (h) of this section and the proponent wishes to bring this matter to the attention of the Board, the proponent should promptly provide the staff with a letter setting forth the reasons for this view and at the same time promptly provide managment with a copy of such letter.

(l)—(m) [Reserved]

(n) *Change in majority of directors.* If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to section 13(d) or 14(d) of the Act, any persons are to be elected or designated as directors of the bank, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the bank, then, not less than 10 days prior to the date any such person takes office as a director, or such shorter period prior to that date as the Board may authorize upon a showing of good cause therefor, the bank shall file with the Board and transmit to all holders of record of securities of the bank who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by Items 5 (a), (d), (e) and (f), 6 and 7 of Form F-5 to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

(o) *Solicitation prior to furnishing required proxy statement.* (1) Notwithstanding the provisions of paragraph (a) of this section, a solicitation (other than one subject to paragraph (i) of this section) may be made prior to furnishing security holders a written proxy statement containing the information specified in Form F-5 with respect to such solicitation if—

(i) The solicitation is made in opposition to a prior solicitation or an invitation for tenders or other publicized activity, which if successful, could reasonably have the effect of defeating the action proposed to be taken at the meeting.

(ii) No form of proxy is furnished to security holders prior to the time the written proxy statement required by paragraph (a) of this section is furnished to security holders; *Provided, however,* That this paragraph (o)(1)(ii) of this section shall not apply where a proxy statement then meeting the requirements of Form F-5 has been furnished to security holders by or on behalf of the person making the solicitation;

(iii) The identity of the person or persons by or on whose behalf the solicitation is made and a description of their interests, direct or indirect, by security holdings or otherwise, are set forth in each communication sent or given to security holders in connection with the solicitation; and

(iv) A written proxy statement meeting the requirements of this section is sent or given to security holders at the earliest practicable date.

(2) Three copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the written proxy statement required by paragraph (a) of this section shall be filed with the Board in preliminary form at least 5 business days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period as may be authorized.

[40 FR 50458, Oct. 30, 1975, as amended at 43 FR 60550, Dec. 28, 1978; 44 FR 67964, Nov. 28, 1979; 46 FR 11239, 11242, Feb. 6, 1981; 46 FR 16099, Mar. 11, 1981; 46 FR 21747, Apr. 14, 1981]

§ 206.6 "Insiders'" securities transactions and reports under section 16 of the Act.

(a) *Filing of statements by directors, officers and principal stockholders.* (1) Initial statements of beneficial ownership of equity securities of a bank required by section 16(a) of the Act, and statements of changes in such beneficial ownership, shall be prepared and filed in accordance with the requirements of Form F-7 and Form F-8, respectively.

(2) A person who is already filing statements with the Board pursuant to section 16(a) of the Act need file an additional statement on Form F-7 when an additional class of equity securities of the same bank becomes registered or when he assumes another or an additional relationship to the bank; for example, when an officer becomes a director.

(3) Any bank that has equity securities listed on more than one national securities exchange may designate one of them as the only exchange with which reports pursuant to section 16(a) of the Act need be filed. Such designation shall be filed with the Board and with each national securities exchange on which any equity security of the bank is listed. After the filing of such designation the securities of such bank shall be exempted with respect to the filing of statements pursuant to section 16(a) of the Act with any exchange other than the designated exchange.

(4) Any director or officer who is required to file a statement on Form F-8 with respect to any change in his beneficial ownership of equity securities which occurs within six months after he became a director or officer of the bank issuing such securities, or within six months after equity securities of such bank first became registered pursuant to section 12 of the Act, shall include in the first such statement the information called for by Form F-8 with respect to all changes in his beneficial ownership of equity securities of such bank which occurred within 6 months prior to the date of the changes which require the filing of such statement.

(5) Any person who has ceased to be a director or officer of a bank which has equity securities registered pursuant to section 12(g) of the Act, or who is a director or officer of a bank at the time it ceased to have any equity securities so registered, shall file a statement on Form F-8 with respect to any change in his beneficial ownership of equity securities of such bank which shall occur on or after the date on which he ceased to be such director or officer, or the date on which bank ceased to have any equity securities so registered, as the case may be, if such change shall occur within 6 months after any change in his beneficial ownership of such securities prior to such date. The statement on Form F-8 shall be filed within 10 days after the end of the month in which the reported change in beneficial ownership occurs.

(b) *Ownership of more than 10 percent of a class of equity securities.* (1) In determining for the purpose of section 16(a) of the Act whether a person is the beneficial owner, directly or indirectly, of more than 10 percent of any class of equity securities, such person shall be deemed to be the beneficial owner of securities of such class which such person has the right to acquire through the exercise of presently exercisable options, warrants or rights or through the conversion of presently convertible securities. The securities subject to such options, warrants, rights or conversion privileges held by a person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person but shall be not be deemed outstanding for the purpose of computing the percentage of the class owned by any other person. This subparagraph shall not be construed to relieve any person of any duty to comply with section 16(a) of the Act with respect to any equity securities consisting of options, warrants, rights or convertible securities which are otherwise subject as a class to section 16(a) of the Act.

(2) For the purpose of this paragraph a person acting in good faith may rely on the information contained in the latest Form F-1, F-1B or F-2 filed with the Board under § 206.4 with respect to the amount of securities of the class outstanding or in the case of voting trust certificates or certificates of deposit the amount thereof issuable.

(3) For the purpose of determining percentage ownership of voting trust certificates or certificates of deposit for equity securities, the class of voting trust certificates or certificates of deposit shall be deemed to consist of the amount of voting trust certificates or certificates of deposits issuable with respect to the total amount of outstanding equity securities of the class which may be deposited under

the voting trust agreement or deposit agreement in question, whether or not all of such outstanding securities have been so deposited.

(c) *Disclaimer of beneficial ownership.* Any person filing a statement may expressly declare therein that the filing of such statement shall not be construed as an admission that such person is, for the purpose of section 16 of the Act, the beneficial owner of any equity securities covered by the statement.

(d) *Ownership of securities held in trust.* (1) Beneficial ownership of a bank's securities for the purpose of section 16(a) of the Act shall include:

(i) The ownership of such securities as a trustee where either the trustee or members of his immediate family have a vested interest in the income or corpus of the trust.

(ii) The ownership of vested beneficial interest in a trust, and

(iii) The ownership of such securities as a settlor of a trust in which the settlor has the power to revoke the trust without obtaining the consent of all beneficiaries.

(2) Except as provided in paragraph (d)(3) of this section, beneficial ownership of securities of registrant banks solely as a settlor or beneficiary of a trust shall be exempt from the provisions of section 16(a) of the Act where less than 20 percent in market value of the securities having a readily ascertainable market value held by such trust (determined as of the end of the preceding fiscal year of the trust) consists of equity securities with respect to which reports are required by section 16(a) of the Act or would be required but for an exemption by the Securities and Exchange Commission, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation similar to the exemption provided for by this sentence. Exemption from section 16(a) of the Act is likewise accorded with respect to any obligation that would otherwise be imposed solely by reason of ownership as settlor or beneficiary of a bank's securities held in trust, where the ownership, acquisition, or disposition of such securities by the trust is made without prior approval by the settlor or beneficiary. No exemption pursuant to this subparagraph shall, however, be acquired or lost solely as a result of changes in the value of the trust assets during any fiscal year or during any time when there is no transaction by the trust in the securities otherwise subject to the reporting requirements of section 16(a) of the Act.

(3) In the event that 10 percent of any class of any equity security of a bank is held in a trust, that trust and the trustees thereof as such shall be deemed a person required to file the reports specified in section 16(a) of the Act.

(4) Not more than one report need be filed to report any holdings of a bank's securities or with respect to any transaction in such securities held by a trust, regardless of the number of officers, directors, or 10 percent stockholders who are either trustees, settlors, or beneficiaries of a trust if the report filed discloses the names of all trustees, settlors, or beneficiaries who are officers, directors, or 10 percent stockholders. A person having an interest only as a beneficiary of a trust shall not be required to file any such report so long as he relies in good faith upon an understanding that the trustee of such trust will file whatever reports might otherwise be required of such beneficiary.

(5) In determining, for the purposes of paragraph (a) of this section, whether a person is the beneficial owner, directly or indirectly, of more than 10 percent of any class of equity security of a bank, the interest of such person in the remainder of a trust shall be excluded.

(6) No report shall be required by any person, whether or not otherwise subject to the requirement of filing reports under section 16(a) of the Act, with respect to his indirect interest in portfolio securities held by

(i) Any holding company registered under the Public Utility Holding Company Act,

(ii) Any investment company registered under the Investment Company Act,

(iii) A pension or retirement plan holding securities of a bank whose employees generally are the beneficiaries of the plan,

(iv) A business trust with over 25 beneficiaries.

(e) *Certain transactions subject to section 16(a)* of the Act. (1) The [granting,] acquisition or disposition of any [presently exercisable] put, call, option, [or other right or obligation to buy securities from, or to sell securities to, another person, or any expiration or cancellation thereof] shall be deemed to effect such a change in the beneficial ownership of the bank's security to which [the right or obligation] relates as to require the filing of a statement reflecting the [granting,] acquisition or disposition of such [right or obligation.] Nothing in paragraph (e) of this section, however, shall exempt any person from filing the statements required upon the exercise of such put, call, [option or other right or obligation to buy or sell securities.]

(i) If any such right or obligation is not initially exercisable, the granting and acquisition thereof shall be reported in a statement filed for the month in which it became exercisable, unless the filing of such statement is otherwise not required.

(ii) The right of a pledgee or borrower of securities to sell the pledge or borrowed securities is not an option or right to sell securities within the meaning of this paragraph. However, the sale of the pledged or borrowed securities by the pledgee or borrower shall be reported by the pledgor or lender.

(iii) The right to acquire securities, or the obligation to dispose of securities, in connection with a merger or consolidation involving the bank issuing the securities is not a right or obligation to buy or sell securities within the meaning of this paragraph.

(2) For the purpose of section 16(a) of the Act both the grantor and the holder of any presently exercisable put, call, option or other right or obligation to buy or sell securities shall be deemed to be beneficial owners of the securities subject to such right or obligation until it is exercised or cancelled or expires.

(3) Notwithstanding the foregoing, a statement need not be filed pursuant to section 16(a) of the Act:

(i) By any person with respect to the acquisition, expiration, surrender to the bank, or cancellation of any nontransferable stock option or stock appreciation right granted by the bank of the securities to which the option or right relates pursuant to a plan which meets the conditions specified in paragraphs (m) (1), (2), (3), (4) and (5) (a), (b), (c), (d) and (e) of this section, or;

(ii) By any bank with respect to any put, call, option or other right or obligation to buy or sell securities of which it is the issuer. As used in this paragraph (e)(3), the term, "plan" shall have the meaning assigned to it in paragraph (m)(4) of this section.

(f) *Exemption from section 16 of securities purchased or sold by odd-lot dealers.* A bank's securities purchased or sold by an odd-lot dealer (1) in odd-lots so far as reasonably necessary to carry on odd-lot transactions, or (2) in round lots to offset odd-lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of business, shall be exempt from the provisions of section 16 of the Act with respect to participation by such odd-lot dealer in such transactions.

(g) *Exemption of small transactions from section 16(a) of the Act.* (1) Any acquisition of a bank's securities shall be exempt from section 16(a) of the Act where

(i) The person effecting the acquisition does not within six months thereafter effect any disposition, otherwise than by way of gift, of securities of the than by way of gift of securities of the same class, and

(ii) The person effecting such acquisition does not participate in acquisitions or in dispositions of securities of the same class having a total market value in excess of $3,000 for any six-month period during which the acquisition occurs.

(2) Any acquisition or disposition of a bank's securities by way of gift, where the total amount of such gifts does not exceed $3,000 in market value for any six-month period, shall be exempt from section 16(a) of the Act and may be excluded from the computations prescribed in paragraph (g)(1)(ii) of this section.

(3) Any person exempted by paragraphs (g) (1) or (2) of this section shall include in the first report filed by him after a transaction within the exemption a statement showing his acquisitions and dispositions for each six-month period or portion thereof that has elapsed since his last filing.

(h) *Temporary exemption of certain persons from sections 16 (a) and (b) of the Act.* During the period of 12 months following their appointment and qualification, a bank's securities held by the following persons shall be exempt from sections 16(a) and 16(b) of the Act:

(1) Executors or administrators of the estate of a decedent;

(2) Guardians or committees for an incompetent; and

(3) Receivers, trustees in bankruptcy, assignees for the benefit of creditors, conservators, liquidating agents, and similar persons duly authorized by law to administer the estate or assets of other persons. After the 12-month period following their appointment and qualification the foregoing persons shall be required to file reports under section 16(a) with respect to a bank's securities held by the estates that they administer and shall be liable for profits realized from trading in such securities pursuant to section 16(b) only when the estate being administered is a beneficial owner of more than 10 per cent of any class of equity security of the bank.

(i) *Exemption from section 16(b) of transactions that need not be reported under section 16(a).* Any transaction that has been or shall be exempted by the Board from the requirements of section 16(a) shall, insofar as it is otherwise subject to the provisions of section 16(b), be likewise exempted from section 16(b).

(j) *Exemption for acquisitions under dividend reinvestment plans.* Any acquisition of securities resulting from reinvestment of dividends or interest shall be exempt from section 16 if it is made pursuant to a plan providing for the regular reinvestment in such securities of dividends payable thereon or of dividends or interest payable on other securities of the same bank: *Provided,* That the plan is made available on the same terms to all holders of securities of the class on which the reinvested dividends or interest are being paid.

(k) *Exemption from section 16(b) of certain transactions by registered investment companies.* Any transaction of purchase and sale or sale and purchase, of any equity security of a bank shall be exempt from the operation of section 16(b), as not comprehended within the purpose of that section, if the transaction is effected by an investment company registered under the Investment Company Act of 1940 and both the purchase and sale of such security have been exempted from the provisions of section 17(a) of the Investment Company Act of 1940 by an order of the Securities and Exchange Commission entered pursuant to section 17(b) of that Act.

(l) *Exemption from section 16(b) of certain transactions effected in connection with a distribution.* (1) Any transaction of purchase and sale, or sale and purchase, of an equity security of a bank that is effected in connection with the distribution of a substantial block of such securities shall be exempt from the provisions of section 16(b), to the extent specified in paragraph (l) of this section, as not comprehended within the purpose of said section, upon the following conditions:

(i) The person effecting the transaction is engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution of such block of securities;

(ii) The security involved in the transaction is (A) a part of such block of securities and is acquired by the person effecting the transaction, with a view to the distribution thereof, from the bank or other person on whose behalf such securities are being distributed or from a person who is participating in good faith in the distribution of such block of securities, or (B) a security purchased in good faith by or for the account of the person effecting the transaction for the purpose of stabilizing the market price of securities of the class being distributed or to cover an overallotment or other short position created in connection with such distribution; and

(iii) Other persons not within the purview of section 16(b) are participating in the distribution of such block of securities on terms at least as favorable as those on which such person is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of section 16(b) by paragraph (l) of this section. However, the performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing such functions shall not preclude an exemption that would otherwise be available under this paragraph.

(2) The exemption of a transaction pursuant to this paragraph (l) with respect to the participation therein of one party thereto shall not render such transaction exempt with respect to participation of any other party therein unless such other party also meets the conditions of this paragraph.

(m) *Exemption from section 16(b) of acquisitions of shares of stock and stock options and stock appreciation rights under certain stock incentive, stock option or similar plans.* Any acquisition of shares of stock (other than stock acquired upon the exercise of an option, warrant or right) pursuant to a plan as defined in paragraph (m)(4)(i) of this section, or any acquisition, expiration, cancellation or surrender to the bank of a stock option or stock appreciation right pursuant to such a plan by a director or officer of the bank shall be exempt from the operation of section 16(b) of the Act if the plan meets the following conditions:

(1) Approval by security holders. The plan has been approved, directly or indirectly,

(i) By the affirmative votes of the holders of a majority of the securities of the bank present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the state or other jurisdiction in which the bank was chartered, or

(ii) By the written consent of the holders of a majority of the securities of the bank entitled to vote: *Provided, however,* That if such a vote or written consent was not solicited substantially in accordance with the rules and regulations, if any, in effect under section 14(a) of the Act at the time of such vote or written consent, the bank shall furnish in writing to the holders of record of the securities entitled to vote for the plan substantially the same information concerning the plan that would be required by the rules and regulations in effect under section 14(a) of the Act at the time such information is furnished, if proxies to be voted with respect to the approval or disapproval of the plan were then being solicited, on or prior to the date of the first annual meeting of security holders held subsequent to the later of:

(*a*) The first registration of an equity security under section 12 of the Act; or

(*b*) The acquisition of an equity security for which exemption is claimed. Such written information may be furnished by mail to the last known address of the security holders of record within 30 days prior to the date of mailing. Four copies of such written information shall be filed with, or mailed for filing to, the Board not later than the date on which it is first sent or given to security holders of the bank. For the purposes of this paragraph, the term "bank" includes a predecessor bank if the plan or obligations to participate thereunder were assumed by the bank in connection with the succession. In addition, any amendment to the plan shall be similarly approved if the amendment would:

(*1*) Materially increase the benefits accruing to participants under the plan;

(*2*) Materially increase the number of securities which may be issued under the plan; or

(*3*) Materially modify the requirements as to eligibility for participation in the plan.

(2) Disinterested administrators. If the selection of any director or officer of the bank to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted pursuant to the plan, or the determination of the number or maximum number or shares of stock which may be allocated to any such director or officer or which may be covered by

stock options or stock appreciation rights granted to any such director or officer pursuant to the plan is subject to the discretion of any person, then such discretion shall be exercised only as follows:

(i) With respect to the participation of directors:

(*a*) By the board of directors of the bank, a majority of which board and a majority of the directors acting in the matter are disinterested persons;

(*b*) By, or only in accordance with the recommendation of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

(*c*) Otherwise in accordance with the plan, if the plan: (*1*) Specifies the number or maximum number of shares of stock which directors may acquire or which may be subject to stock options or stock appreciation rights granted to directors pursuant to the plan and the terms upon which, and the times at which, or the periods within which, such stock may be acquired or such options or rights may be acquired and exercised; or (*2*) sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time-to-time or similar factors.

(ii) With respect to the participation of officers who are not directors:

(*a*) By the Board of directors of the bank or a committee of three or more directors;

(*b*) By, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

(*c*) Otherwise in accordance with the plan, if the plan:

(*1*) Specifies the number of maximum number of shares of stock which officers may acquire or which may be subject to stock options or stock appreciation rights granted to officers pursuant to the plan and the terms upon which, and the times at which, or the period within which, such stock may be acquired or such options or rights may be acquired and exercised; or

(*2*) Sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time-to-time or similar factors.

(iii) The provisions of this paragraph shall not apply with respect to any option or right granted or other equity security acquired, prior to the date of the first registration of an equity security under section 12 of the Act.

(3) Plan limitations. As to each participant or as to all participants the plan effectively limits the aggregate dollar amount of stock or the aggregate number of shares of stock which may be allocated, or which may be subject to stock options or stock appreciation rights issued pursuant to the plan. The limitations may be established on an annual basis, or for the duration of the plan, whether or not the plan has a fixed termination date, and may be determined either by fixed or maximum dollar amounts or fixed or maximum numbers of shares or by formulas based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time-to-time, or similar factors that will result in an effective and determinable limitation. Such limitations may be subject to any provision for adjustment of the plan or of stock allocable or options outstanding thereunder to prevent dilution or enlargement of rights.

(4) Definitions. Unless the context otherwise requires, all terms used in this rule shall have the same meaning as in the Act or elsewhere in Part 206. In addition, the following definitions apply:

(i) The term "plan" shall mean an option, bonus, appreciation, profit sharing, retirement, incentive, thrift, savings or similar plan that meets the following conditions:

(*a*) The plan must be set forth in a written document describing the means or basis for determining the eligibility of individuals to participate and either the price at which the securities may be offered or the method by which the price or the amount of the award is to be determined; and

(*b*) The plan must provide with respect to any option or similar right (including a stock appreciation right) offered pursuant to the plan that such option or right is not transferable other than by will or the laws of descent and distribution and that it is exercisable during the employee's lifetime only by him or his guardian or legal representative.

(ii) The term "exercise of an option, warrant or right" contained in the parenthetical clause of the first paragraph of paragraph (m) of this section shall not include:

(*a*) The making of an election to receive under any plan compensation in the form of stock or credits therefor, provided that such election is made either prior to the making of the award or prior to the fulfillment of all conditions to the receipt of the compensation and, provided, further, that such election is irrevocable until at least six months after termination of employment;

(*b*) The subsequent crediting of such stock;

(*c*) The making of any election as to the time for delivery of such stock after termination of employment, provided that such election is made at least six months prior to any such delivery;

(*d*) The fulfillment of any condition to the absolute right to receive such stock; or

(*e*) The acceptance of certificates for shares of such stock.

(iii) The term "disinterested person" used in paragraphs (m) (2) and (5) of this section shall mean an administrator of a plan who is not at the time he exercises discretion in administering the plan eligible and has not at any time within one year prior thereto been eligible for selection as a person to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted pursuant to the plan or any other plan of the bank or any of its affiliates entitling the participants therein to acquire stock, stock options or stock appreciation rights of the bank or any of its affiliates.

(5) Cash settlements of stock appreciation rights. Any transaction involving the exercise and cancellation of a stock appreciation right issued pursuant to a plan (whether or not the transaction also involves the related surrender and cancellation of a stock option), and the receipt of cash in complete or partial settlement of that right, shall be exempt from the operation of section 16(b) of the Act, as not comprehended within the purpose of that section, if all the following conditions are met:

(i) Information about the issue. (*a*) The bank that is the issuer of the stock appreciation right has been subject to the reporting requirements of section 13 of the Act for at least a year prior to the transaction and has filed all reports and statements required to be filed pursuant to that section during that year.

(*b*) The bank that is the issuer of the stock appreciation right on a regular basis does release for publication quarterly and annual summary statements of revenues and earnings. This condition shall be deemed satisfied if the specified financial data appears (*1*) on a wire service, (*2*) in a financial news service, (*3*) in a newspaper of general circulation, or (*4*) is otherwise made publicly available.

(ii) Limitation of the right and any related option. Neither the stock appreciation right nor any related stock option shall have been exercisable during the first six months of their respective terms, except that this limitation shall not apply in the event death or disability of the grantee occurs prior to the expiration of the six-month period.

(iii) Administration of the plan. (*a*) The plan shall be administered by either the board of directors, a majority of which are disinterested persons and a majority of the directors acting on plan matters are disinterested persons, or by a committee of three or more persons, all of whom are disinterested persons;

(*b*) The board or committee shall have sole discretion either:

(*1*) To determine the form in which payment of the right will be made (i.e, cash, securities, or any combination thereof), or

(*2*) To consent to or disapprove the election of the participant to receive cash in full or partial settlement of the right. Such consent or disapproval may be given at any time after the election to which it relates.

(*c*) Any election by the participant to receive cash in full or partial settlement of the stock appreciation right, as well as any exercise by him of this stock appreciation right for such cash, shall be made during the period beginning on the third business day following the date of release of the financial data specified in paragraph (m)(5)(i)(*b*) of this section and ending on the twelfth business day following such date. This paragraph, (m)(5)(iii)(*c*), however, shall not apply to any exercise by the participant of a stock appreciation right for cash where the date of exercise:

(*1*) Is automatic or fixed in advance under the plan;

(*2*) Is at least six months beyond the date of the stock appreciation right; and

(*3*) Is outside the control of the participant.

(iv) Compliance with other conditions of paragraph (m) of this section. The plan under which the stock appreciation rights and any related options are granted shall meet the conditions, specified above in paragraphs (m) (1), (2), (3), and (4) of this section.

(v) Limit of the exemption. Nothing in this paragraph (m)(5) of this section provides an exemption from section 16(b) for the acquisition of stock upon the exercise of a stock appreciation right or a stock option.

(n) *Exemption from section 16(b) of long-term profits incident to sales within six months of the exercise of an option.* (1) To the extent specified in paragraph (n)(2) of this section, transactions involving the purchase and sale, or sale and purchase, of any equity security of a bank shall be exempt from the operation of section 16(b), as not comprehended within the purpose of that section, if such purchase is pursuant to the exercise of an option, warrant, or right either—

(i) Acquired more than six months before its exercise, or

(ii) Acquired pursuant to the terms of an employment contract entered into more than six months before its exercise.

(2) With respect to transactions specified in paragraph (n)(1) of this section, the profits inuring to the bank pursuant to section 16(b) shall not exceed the difference between the proceeds of sale and the lowest market price of any security of the same class within six months before or after the date of sale. Nothing in paragraph (n) of this section shall be deemed to enlarge the amount of profit that would inure to the bank in the absence of this paragraph.

(3) The disposition of any equity security of a bank shall also be exempt from the operation of section 16(b), as not comprehended within the purpose of that section, if purchased in a transaction specified in paragraph (n) of this section pursuant to a plan or agreement for merger or consolidation, or reclassification of the bank's securities, or for the exchange of its securities for the securities of another person that has acquired its assets, where the terms of such plan or agreement are binding upon all stockholders of the bank except to the extent that dissenting stockholders may be entitled, under statutory provisions or provisions contained in the bank's charter, to receive the appraised or fair value of their holdings.

(4) The exemptions provided by paragraph (n) of this section shall not apply to any transaction made unlawful by section 16(c) or by any regulations thereunder.

(5) The burden of establishing market price of a security for the purpose of paragraph (n) of this section shall rest upon the person claiming the exemption.

(o) *Exemption from section 16(b) of dispositions of equity securities pursuant to certain mergers or consolidations incident to formation of a bank holding company.* (1) There shall be exempt from the provisions of section 16(b), as not comprehended within the purpose of that section, the disposition of any equity security, pursuant to a merger or consolidation, of a bank which, prior to said merger or consolidation, held over 85 percent of the combined assets of all the companies undergoing merger or consolidation, as determined by reference to their most recent available financial statements for a 12-month period prior to the merger or consolidation, if, in such merger or consolidation, there are issued, in exchange for such equity securities of such bank equity securities of a bank holding company as defined in the Bank Holding Company Act of 1956, as amended. 12 U.S.C. 1841.

(2) Notwithstanding the foregoing, if an officer, director, or stockholder shall make any purchase (other than a purchase exempted by this paragraph or any rule under section 16(b) of the Act) of an equity security of any company involved in the merger or consolidation and any sale (other than a sale exempted by this paragraph or any rule under section 16(b) of the Act) of an equity security in any other company involved in the merger or consolidation within any period of less than six months during which the merger or consolidation took place, the exemption provided by this rule shall be unavailable to such officer, director, or stockholder to the extent of such purchase and sale.

(p) *Exemptions from section 16(b) of transactions involving the deposit or withdrawal of equity securities under a voting trust or deposit agreement.* (1) Any acquisition or disposition of an equity security involved in the deposit of such security under, or the withdrawal of such security from, a voting trust or deposit agreement, and the acquisition or disposition in connection therewith of the certificate representing such security, shall be exempt from the operation of section 16(b) of the Act if substantially all of the assets held under the voting trust or deposit agreement immediately after the deposit or immediately prior to the withdrawal, as the case may be, consisted of equity securities of the same class as the security deposited or withdrawn; provided, however, that this rule shall not apply to the extent that there shall have been either (i) a purchase of an equity security of the class deposited and a sale of any certificate representing an equity security of such class, or (ii) a sale of an equity security of the class deposited and a purchase of any certificate representing an equity security of such class (otherwise than in a transaction involved in such deposit or withdrawal or in a transaction exempted by any rule under section 16(b)) within a period of less than six months which includes the date of the deposit or withdrawal.

(q) *Exemption from section 16(b) of transactions involving the conversion of equity securities.* (1) Any acquisition or disposition of an equity security involved in the conversion of an equity security which, by its terms or pursuant to the terms of the bank's corporate charter or other governing instruments, is convertible immediately or after a stated period of time into another equity security of the same bank, shall be exempt from the operation of section 16(b) of the Act; provided, however, that this paragraph shall not apply to the extent that there shall have been either (i) a purchase of any equity security of the class convertible (including any acquisition of or change in a conversion privilege) and a sale of any equity security of the class issuable upon conversion, or (ii) a sale of any equity security of the class convertible and any purchase of any equity security issuable upon conversion (otherwise than in a transaction involved in such conversion or in a transaction exempted by any paragraph under section 16(b)) within a period of less than six months which includes the date of conversion.

(2) For the purpose of this paragraph, an equity security shall not be deemed to be acquired or disposed of upon conversion of an equity security if the terms of the equity security converted require the payment or entail the receipt, in connection with such conversion, of cash or other property (other than equity securities involved in the conversion) equal in value at the time of conversion to more than 15 percent of the value of the equity security issued upon conversion.

(3) For the purpose of this paragraph, an equity security shall be

deemed convertible if it is convertible at the option of the holder or of some other person or by operation of the terms of the security or of the governing instruments.

(r) *Exemption from section 16(b) of certain transactions involving the sale of subscription rights.* (1) Any sale of a subscription right to acquire any subject security of the same bank shall be exempt from the provision of section 16(b) of the Act, to the extent prescribed in this paragraph, as not comprehended within the purpose of said section, if:

(i) Such subscription right is acquired, directly or indirectly, from the bank without the payment of consideration;

(ii) Such subscription right by its terms expires within 45 days after the issuance thereof; and

(iii) Such subscription right by its terms is issued on a pro rata basis to all holders of the beneficiary security of the bank.

(2) When used within this paragraph the following terms shall have the meaning indicated:

(i) The term "subscription right" means any warrant or certificate evidencing a right to subscribe to or otherwise acquire an equity security.

(ii) The term "beneficiary security" means a security registered pursuant to section 12 of the Act to the holders of which a subscription right is granted.

(iii) The term "subject security" means a security which is the subject of a subscription right.

(3) Notwithstanding anything contained herein to the contrary, if a person purchases subscription rights for cash or other consideration, then a sale by such person of subscription rights otherwise exempted by this paragraph will not be so exempted to the extent of such purchases within the 6-month period preceding or following such sale.

(s) *Exemption of certain securities from section 16(c).* Any equity security of a bank shall be exempt from the operation of section 16(c) to the extent necessary to render lawful under such section the execution by a broker of an order for an account in which he had no direct or indirect interest.

(t) *Exemption from section 16(c) of certain transactions effected in connection with a distribution.* Any equity security of a bank shall be exempt from the operation of section 16(c) to the extent necessary to render lawful under such section any sale made by or on behalf of a dealer in connection with a distribution of a substantial block of the bank's securities, upon the following conditions:

(1) The sale is made with respect to an overallotment in which the dealer is participating as a member of an underwriting group, or the dealer or a person acting on his behalf intends in good faith to offset such sale with a security to be acquired by or on behalf of the dealer as a participant in and underwriting, selling, or soliciting-dealer group of which the dealer is a member at the time of the sale, whether or not the security to be so acquired is subject to a prior offering to existing security holders or some other class of persons; and

(2) Other persons not within the purview of section 16(c) are participating in the distribution of such block of securities on terms at least as favorable as those on which such dealer is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of section 16(c) by paragraph (t) of this section. The performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing such functions shall not, however, preclude an exemption that would otherwise be available under this paragraph.

(u) *Exemption of sales of securities to be acquired.* (1) Whenever any person is entitled, as an incident to his ownership of an issued equity security of a bank and without the payment of consideration, to receive another security of the bank "when issued" or "when distributed", the security to be acquired shall be exempt from the operation of section 16(c) if:

(i) The sale is made subject to the same conditions as those attaching to the right of acquisition;

(ii) Such person exercises reasonable diligence to deliver such security to the purchaser promptly after his right of acquisition matures; and

(iii) Such person reports the sale on the appropriate form for reporting transactions by persons subject to section 16(a).

(2) This paragraph (u) shall not be construed as exempting transactions involving both a sale of a security "when issued" or "when distributed" and a sale of the security by virtue of which the seller expects to receive the "when-issued" or "when-distributed" security, if the two transactions combined result in a sale of more units than the aggregate of those owned by the seller plus those to be received by him pursuant to his right of acquisition.

(v) *Arbitrage transactions under section 16.* It shall be unlawful for any director or officer of a bank to effect any foreign or domestic arbitrage transaction in any equity security of the bank, unless he shall include such transaction in the statements required by section 16(a) of the Act and paragraph (a) of this section and shall account to such bank for the profits arising from such transaction, as provided in section 16(b). The provisions of section 16(c) shall not apply to such arbitrage transactions. The provisions of paragraph (a) of this section and of section 16 shall not apply to any bona fide foreign or domestic arbitrage transaction insofar as it is effected by any person other than such director or officer of the bank issuing such security.

[40 FR 50458, Oct. 30, 1975, as amended at 43 FR 60552, Dec. 28, 1978; 46 FR 11242, Feb. 6, 1981]

§ 206.7 Form and content of financial statements.

(a) *Principles of financial reporting.* Financial statements filed with the Board pursuant to this part shall be prepared in accordance with generally accepted accounting principles and practices applicable to banks. The Board may from time to time issue releases on accounting principles and practices to be used with respect to specific areas.

(b) *Verification*—(1) *General.* (i) Every verification with respect to financial statements filed pursuant to this part shall be dated, shall be signed manually, shall indicate the city and State where issued, and shall identify without detailed enumeration the financial statements covered by the verification.

(ii) If the person or persons making a verification considers that he/she must take exceptions or express qualifications with respect thereto, each such exception or qualification shall be stated specifically and clearly and, to the extent practicable, shall indicate the effect of the matter on the financial statements to which it relates.

(2) *Opinions to be expressed by principal accounting officer and internal auditor.* Every verification by a bank's principle accounting officer and internal auditor shall state:

(i) The opinions of such persons with respect to the financial statements covered by the verification and the accounting principles and practices reflected therein; and

(ii) The opinions of such persons as to any material changes in accounting principles or practices or in the method of applying the accounting principles or practices, or adjustments of the accounts, required to be set forth by paragraph (e)(5) of this section.

(3) *Examination by independent public accountants*—(i) *Qualifications of independent public accountants.* (A) The Board will not recognize any person as an independent public accountant who is not registered or licensed to practice as a public accountant by a regulatory authority of a State and in good standing with such authority as such an accountant.

(B) The Board will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates (*1*) in which, during the period of his/her professional engagement to examine the financial statements being reported on or at that date of his/her report, the firm or a member of the firm had, or was committed to acquire, any direct financial interest or any material indirect financial interest, or (*2*) with which, during the period of his/her professional engagement to examine the financial statements being reported on, at the date of the report or during the period covered by the financial statements, the firm or a member of the firm was connected as a promoter, underwriter, voting trustee, director, officer, or employee. A firm will be deemed independent in regard to a particular person if a former officer or employee of such person is employed by the firm and such individual has been completely disassociated himself from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his/her employment by the person. For the purposes of § 206.7 the term "member" means all partners in the firm and all professional employees participating in the audit or located in an office of the firm participating in a significant portion of the audit.

(C) In determining whether a public accountant is, in fact, independent with respect to a particular person, the Board will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Board.

(ii) *Representations as to the audit.* The independent public accountant's report—

(A) Shall state whether the audit was made in accordance with generally accepted auditing standards; and

(B) Shall designate any auditing procedures generally recognized as normal (or deemed necessary by the accountant under the circumstances of the particular case) that have been omitted, and the reasons for their omission. Nothing in this provision shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (b)(3)(iii) of this section.

(iii) *Opinions to be expressed.* The independent public accountant's report shall state clearly:

(A) The opinion of the accountant with respect to the financial statements covered by the report and the accounting principles and practices reflected therein; and

(B) The opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements required to be set forth by paragraph (e)(5) of this section.

(iv) *Exceptions.* If the accountant making the report considers that he/she must take exceptions or express qualifications with respect thereto, each such exception or qualification shall be stated specifically and clearly and, to the extent practicable, shall indicate the effect of the matter on the financial statements to which it relates.

(v) *Association with unaudited note covering interim financial data.* If the financial statements covered by the accountant's report designate as "unaudited" the note required by paragraph (e)(13)(vii) of this section, it shall be presumed that appropriate professional standards and procedures with respect to the data in the note have been followed by the independent accountant who is associated with the unaudited footnote by virtue of reporting on the financial statements in which the note is included.

(vi) *Examination of financial statements by more than one independent public accountant.* If, with respect to the examination of the financial statements of any bank, the principal independent public accountant relies on an audit made by another independent public accountant of certain of the accounts of such bank or its subsidiaries, the report of such other accountant shall be filed (and the provisions of this subparagraph shall be applicable thereto); however, the report of such other accountant need not be filed (A) if no reference is made directly or indirectly to such other accountant's audit in the principal accountant's report, or (B) if, having referred to such other accountant's audit the principal accountant's report indicates an assumption of responsibility for such other accountant's audit.

(c) *Falsification of accounting records.* No person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to section 13(b)(2)(A) of the Securities Exchange Act.

(d) *Bank's representations in connection with the preparation of required reports and documents.* No director or officer of a bank shall directly or indirectly make or cause to be made a materially false or misleading statement, or omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with (1) any audit or examination of the financial statements of the bank required to be made pursuant to this part or (2) the preparation or filing of any document or report required to be filed with the Board pursuant to this part or otherwise.

(e) *Provisions of general application*—(1) *Requirements as to form.* Financial statements shall be prepared in accordance with the applicable requirements of Formats 9A, B, C, D, and E. All money amounts required to be shown in financial statements may be expressed in even dollars or thousands of dollars. If shown in even thousands, an indication to that effect shall be inserted immediately beneath the caption of the statement or schedule, or at the top of each money column. The individual amounts shown need not be adjusted to the nearest dollar or thousand if the failure of the items to add to the totals shown is stated in a note as due to the dropping of amounts of less than $1.00 or $1,000, as appropriate.

(2) *Items not material.* If the amount that would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth.

(3) *Inapplicable captions and omission of unrequired or inapplicable financial statements.* No caption need be shown in any financial statement required by the forms set forth in this Part as to which the items and conditions are not present. Financial statements not required or inapplicable because the required matter is not present need not be filed, but the statements omitted and the reasons for their omission shall be indicated in the list of financial statements required by the applicable form.

(4) *Additional information.* In addition to the information required with respect to any financial statement, such further information shall be furnished as is necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

(5) *Changes in accounting principles and practices and retroactive adjustments of accounts.* Any change in accounting principle or practice, or in the method of applying any accounting principle or practice, made during any period for which financial statements are filed that affects comparability of such financial statements with those of prior or future periods and the effect thereof upon the net income for each period for which financial statements are filed, shall be disclosed in a note to the appropriate financial statement. Any material retroactive adjustment made during any period for which financial statements are filed, and the effect thereof upon net income of prior periods, shall be disclosed in a note to the appropriate financial statement.

(6) *Summary of accounting principles and practices.* Information required in notes as to accounting principles and practices reflected in the financial statements may be presented in the form of a single statement. In such a case specific references shall be made in the appropriate financial statements to the applicable portion of such single statement.

(7) *Reacquired evidences of indebtedness.* Reacquired evidences of indebtedness shall be deducted from the appropriate caption.

(8) *Reacquired shares.* When authorized by statute, reacquired shares not retired shall be shown separately as a deduction from capital shares, or from the total of capital shares and other stockholders' equity, at either par or stated value, or cost, as circumstances require.

(9) *Foreign activities.* If assets, or operating income, or income (loss)

before taxes and securities gains (losses), or net income (loss) associated with foreign activities, exceeded 10 percent of the corresponding amount in the related financial statements, the following disclosures concerning foreign activities shall be furnished in a note to the financial statements.

(i) Loans. State separately loan categories as prescribed by Schedule A, Column C of Consolidated Report of Condition, FR 2106, as applicable. Categories of less than 10 percent of total loans related to foreign activities may be grouped with all other loans.

(ii) Balances with banks in foreign countries. State separately balances with foreign branches of other U.S. banks and with other banks in foreign countries. (See lines 5 (a) and (b) of Schedule C, Column C of Consolidated Report of Condition, FR 2106.) Also furnish the amount of interest-bearing balances included above.

(iii) Deposit liabilities. Furnish deposit information as prescribed in Schedule F/F of Consolidated Report of Condition, FR 2106. State also amount of interest-bearing deposits in denominations of $100,000 or more.

(iv) Other borrowings. State separately short-term borrowings, other liabilities for borrowed money, and other indebtedness related to foreign activities corresponding to the amounts reported on the Balance Sheet (Format F-9A) Items 18, 20, 21 and 25.

(v) Income and expense summary. For each period for which an income statement is filed, furnish information as prescribed in Part 1, Column B and Part 2 of the Statement of Income FR 2107s. State in a note the basis of pricing money transfers and the policy governing allocation of income and expenses to foreign activities.

(vi) Allowance for possible loan losses. For each period for which a statement of income is filed, furnish in a note a reconciliation of changes in the allowance for possible loan losses applicable to loans related to foreign activities.

(vii) If disclosure above is required, state separately in a note for each significant geographic area, and in the aggregate for all other geographic areas not deemed significant, the following.

(A) Total assets (net of valuation allowances);

(B) Total operating income;

(C) Income (loss) before taxes and securities gains (losses);

(D) Net income (loss);

NOTE: A "significant geographic area" is one whose assets, operating income, or net income exceed 10 percent of the comparable amount as reported in the related financial statements.

(10) *Foreign currencies*. The basis of conversion of all items in foreign currencies shall be stated, and the amount and disposition of the resulting unrealized profit or loss shown.

Disclosure should be made as to the effect, insofar as this can be reasonably determined, of foreign exchange restrictions upon the consolidated financial position and operating results of the bank and its subsidiaries.

(11) *Commitments*. If material in amount, the pertinent facts relative to firm commitments for the acquisition, directly or indirectly, of fixed assets and for the purchase, repurchase, construction, or rental of assets under long-term leases shall be stated briefly in the balance sheet or in footnotes referred to therein. Where the rentals or obligations under long-term leases are material the following shall be set forth in a note to appropriate financial statement:

(i) Total rental expense (reduced by rentals from subleases, with disclosure of such amounts) entering into the determination of results of operations for each period for which an income statement is presented shall be disclosed. Rental payments under short-term leases for a month or less which are not expected to be renewed need not be included. Contingent rentals, such as those based upon usage or sales, shall be reported separately from the basic or minimum rentals.

(ii) The minimum rental commitments under all noncancelable leases shall be disclosed, as of the date of the latest balance sheet required, in the aggregate for (A) each of the five succeeding fiscal years and (B) the remainder as a single amount. The amounts so determined should be reduced by rentals to be received from existing noncancelable subleases (with disclosure of the amounts of such rentals). For purposes of this rule, a noncancelable lease is defined as one that has an initial or remaining term of more than one year and is noncancelable, or is cancelable only upon the occurrence of some remote contingency or upon the payment of a substantial penalty.

(iii) Additional disclosures shall be made to report in general terms; (A) the basis for calculating rental payments if dependent upon factors other than the lapse of time; (B) existence and terms of renewal or purchase options, escalation clauses, etc.; (C) the nature and amount of related guarantees made or obligations assumed; (D) restrictions on paying dividends, incurrring additional debt, further leasing, etc.; and (E) any other information necessary to assess the effect of lease commitments upon the financial position, results of operations, and changes in financial position of the lessee.

(12) *General notes to balance sheets.* If present with respect to the bank for which the statement is filed, the following shall be set forth in the balance sheet or in referenced notes thereto. Information required by paragraphs (e)(12) (i), (v), (vi), (vii), (viii), (ix) and (x) of this section shall be provided with the most recent fiscal year balance sheet and any interim date balance sheet being filed.

(i) *Assets subject to lien.* The amounts of assets mortgaged, pledged, or otherwise subject to a lien or security interest shall be designated and the obligation secured thereby, if any, shall be identified briefly.

(ii) *Intercompany profits and losses.* The effect upon any balance sheet item of profits or losses, resulting from transactions with affiliated companies and not eliminated shall be stated. If impracticable of accurate determination without unreasonable effort or expense, an estimate or explanation shall be given.

(iii) *Pension and retirement plans.* (A) A brief description of the essential provisions of any employee pension or retirement plan and of the accounting and funding policies relating thereto shall be given; (B) the estimated annual cost of the plan shall be stated; (C) if a plan has not been funded or otherwise provided for, the estimated amount that would be necessary to fund or otherwise provide for the past-service cost of the plan shall be disclosed; (D) the excess, if any, of the actuarily computed value or vested benefits over the total of the pension fund and any balance sheet accruals, less any pension prepayments or deferred charges, shall be stated as of the most recent practicable date; (E) a statement shall be given of the nature and effect of significant matters affecting comparability of pension costs for which income statements are presented.

(iv) *Capital stock optioned to officers and employees.* (A) A brief description of the terms of each option arrangement shall be given, including the title and amount of securities subject to the option, the year or years during which the options were granted, and the year or years during which the optionees became, or will become, entitled to exercise the options; (B) there shall be stated the number of shares under option at the balance sheet date, and the option price and the fair value thereof (per share and in total) at the dates the options were granted; the number of shares with respect to which options became exercisable during the period, and the option price and the fair value thereof (per share and in total) at the dates the options were exercised; and the number of unoptioned shares available at the beginning and at the close of the latest period presented, for the granting of options under an option plan. A brief description of the terms of each other arrangement covering shares sold or offered for sale to only directors, officers, and key employees shall be given, including the number of shares, and the offered price and fair value thereof (per share and in total) at the dates of sale or offer to sell, as appropriate. The required information may be summarized as appropriate with respect to each of the categories referred to in this subclause (B); (C) the basis of accounting for such option arrangements and the amount of charges, if any, reflected in income with respect thereto shall be stated.

(v) *Restrictions that limit the availability of surplus and/or undivided profits for dividend purposes.* Describe the most restrictive of any such restriction, other than as reported, pursuant to Item 26(b) of Format F-9A, indicating briefly its source, its pertinent provisions, and where appropriate and determinable, the amount of the surplus and/or undivided profits (A) so restricted or (B) free of such restrictions.

(vi) *Contingent liabilities.* A brief statement as to contingent liabilities not reflected in the balance sheet shall be made.

(vii) *Standby letters of credit.* State the amount of outstanding "standby letters of credit." For the purpose of this paragraph, "standby letters of credit" include ever letter of credit (or similar arrangement however named or designated) which represents an obligation to the beneficiary on the part of the issuing bank (A) to repay money borrowed by or advanced to or for the account of the account party or (B) to make payment on account of any evidence of indebtedness undertaken by the account party, or (C) to make payment on account of any default by the account party in the performance of an obligation,[1] except that, if prior to or at the time of issuance of a standby letter of credit, the issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit, or has set aside sufficient funds in a segregated, clearly earmarked deposit account to cover the bank's maximum liability under the standby letter of credit, then the amount of that standby letter of credit need not be stated.

(viii) *Defaults.* The facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any issue of securities or credit agreements, or any breach of covenant of a stated indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not been subsequently cured, shall be stated. Notation of such default or breach of covenant shall be made in the financial statements. If a default breach exists, but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, state the amount of the obligation and the period of the waiver.

(ix) *Significant changes in bonds, mortgages, and similar debt.* Any significant changes in the authorized or issued amounts of bonds, mortgages, and similar debt since the date of the latest balance sheet being filed for a particular person or group shall be stated.

(x) *Warrants or rights outstanding.* Information with respect to warrants or rights outstanding at the date of the related balance sheet shall be set forth as follows:

(A) Title of issue of securities called for by warrants or rights outstanding; (B) aggregate amount of securities called for by warrants or rights outstanding; (C) date from which warrants or rights are exercisable and expiration date; (D) price at which warrant or right is exercisable.

(13) *General notes to statements of income.* If present with respect to the bank for which the statement is filed, the following shall be set forth in the statement of income or in referenced notes thereto:

(i) *Intercompany profits and losses.* The amount of any profits or losses resulting from transactions between unconsolidated affiliated companies shall be stated. If impracticable of determination without unreasonable effort and expense, an estimate or explanation shall be given.

(ii) *Depreciation and amortization.* For the period for which statements of income are filed, there shall be stated the policy followed with respect to:

(A) The provision for depreciation of physical properties or valuation allowances created in lieu thereof, including the methods and, if practicable, the rates used in computing the annual amounts; (B) the provision for depreciation and amortization of intangibles or valuation allowances created in lieu thereof, including the methods and, if practicable, the rates used in computing the annual amounts; (C) the accounting treatment for maintenance, repairs, renewals, and improvements; and (D) the adjustment of the accumulated valuation allowances for depreciation and amortization at the time the properties were retired or otherwise disposed of, including the disposition made of any profit or loss on sale of such properties.

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[1] As defined, "standby letter of credit" would not include (1) commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer and which do not "guaranty" payment of a money obligation or (2) a guaranty or similar obligation issued by a foreign branch in accordance with and subject to the limitations of Regulation M.

(iii) *Bonus, profit sharing, and other similar plans.* Describe the essential provisions of any such plans in which only directors, officers or key employees may participate, and state, for each of the fiscal periods for which income statements are required to be filed, the aggregate amount provided for all plans by charges to expense.

(iv) *Income tax expense.* (A) Disclosure shall be made, in the income statement or a note thereto, of the components of income tax expense, including:

(*1*) Taxes currently payable; (*2*) the net tax effects, as applicable, of (*i*) timing differences (indicate separately the amount of the estimated tax effect of each of the various types of timing differences where the amount of each such tax effects exceeds 5 percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rates; other differences may be combined) and (*ii*) operating losses; and (*3*) the net deferred investment tax credits. Amounts applicable to United States Federal income taxes, to foreign income taxes and to other income taxes shall be stated separately for each major component, unless the amounts applicable to foreign and other income taxes do not exceed 5 percent of the total for the component.

(B) If it is expected that the cash outlay for income taxes with respect to any of the succeeding three years will substantially exceed income tax expense for such year, that fact should be disclosed together with the approximate amount of the excess, the year (or years) of occurrence and the reasons therefor.

(C) Provide a reconciliation between the amount of reported total income tax expense and the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, showing the estimated dollar amount of each of the underlying causes for the difference. If no individual reconciling item amounts to more than 5 percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, and the total difference to be reconciled is less than 5 percent of such computed amount, no reconciliation need be provided unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than 5 percent of the computed amount may be aggregated in the reconciliation. The reconciliation may be presented in percentages rather than in dollar amounts.

(v) *Interest capitalized.* The amount of interest cost capitalized in each period for which an income statement is presented shall be shown within the income statement. Banks which follow a policy of capitalizing interest cost shall make the following additional disclosures:

(A) The reason for the policy of interest capitalization and the way in which the amount to be capitalized is determined.

(B) The effect on net income for each period for which an income statement is presented of following a policy of capitalizing interest as compared to a policy of charging interest to expense as incurred.

(vi) *Disagreements on accounting and financial disclosure matters.* If, (A) within the twenty-four months prior to the date of the most recent financial statements, a Form F-3 has been filed reporting a change of accountants, (B) included in the Form F-3 there was a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, (C) during the fiscal year in which the change in accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved the reported disagreement, and (D) such transactions or events where material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountant apparently concluded was required. The effects on the financial statements need not be disclosed if the method asserted by the former accountant ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

(vii) Disclosure of selected quarterly financial data in notes to financial statements.

Exemption. This rule shall not apply unless the bank meets the following conditions:

(A) The bank's securities registered under section 12(g) of the Securities Exchange Act of 1934 are quoted on the National Association of Securities Dealers Automated Quotation System and (*1*) meet the requirements for continued inclusion on the list of OTC margin stocks set forth in § 220.8(i) of Regulation T of the Board of Governors of the Federal Reserve System or (*2*) the bank has securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934; and

(B) The bank and its consolidated subsidiaries (*1*) have had a net income after taxes but before extraordinary items and the cumulative effect of a change in accounting of a least $250,000 for each of the last three fiscal years; or (*2*) had total assets of at least $200,000,000 as of the end of the last fiscal year.

(*a*) Disclosure shall be made in a note to financial statements of total operating income, income before securities gains (losses), income before extraordinary items and cumulative effect of a change in accounting, net income, and per share data based upon such income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented.

(*b*) When the data required by the preceding paragraph above vary from the amounts previously reported on the Form F-4 filed for any quarter, such as would be the case when a pooling of interests occurs or where an error is corrected, reconcile the amounts given with those previously reported describing the reason for the difference.

(*c*) Describe the effect of any unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented, as well as the aggregate effect and the nature of year-end or other adjustments that are material to the results of that quarter.

(*d*) Where this note is part of audited financial statements, it may be designated "unaudited."

(f) *Consolidated financial statements.* (1) Consolidated statements generally present more meaningful information to the investor than unconsolidated statements. Except where good reason exists, consolidated statements of the bank and its majority-owned significant subsidiaries should be filed.

(2) Every majority-owned bank-premises subsidiary and every majority-owned subsidiary operating under the provisions of section 25 or section 25(a) of the Federal Reserve Act ("Agreement Corporations" and "Edge Act Corporations") shall be consolidated with that of the reporting bank irrespective of whether such subsidiary is a significant subsidiary.

(3) If the financial statements of a subsidiary are as of a date or for periods different from those of the bank, such statements may be used as the basis for consolidation of the subsidiary only if the date of such statements is not more than 93 days from the date of the close of the bank's fiscal year; the closing date of the subsidiary is specified; the necessity for the use of different closing dates is explained briefly; and any changes in the respective fiscal periods of the bank and the subsidiary made during the period of report are indicated clearly.

(4) There shall be set forth in a note to each consolidated balance sheet

filed a statement of any difference between the investment in subsidiaries consolidated, as shown by the bank's books, and the bank's equity in the net assets of such subsidiaries as shown by the subsidiaries' books. If any such difference exists, there shall be set forth the amount of the difference and the disposition made thereof in preparing the consolidated statements, naming the balance sheet captions, and stating the amount included in each.

(5) There may be filed financial statements in which majority-owned subsidiaries not consolidated with the parent are consolidated or combined in one or more groups, and 50 per cent or less owned persons, the investments in which are accounted for by the equity method are consolidated or combined in one or more groups, pursuant to principles of inclusion or exclusion which will clearly exhibit the financial position and results of operations of the group or groups.

(6) A brief description of the principles followed in consolidating or combining the separate financial statements, including the principles followed in determining the inclusion or exclusion of (i) subsidiaries and (ii) companies in consolidated or combined financial statements, shall be stated in the notes to the respective financial statements.

(7) As to each consolidated financial statement and as to each combined financial statement, if there has been a change in the persons included or excluded in the corresponding statement for the preceding fiscal period filed with the Board which has a material effect on the financial statements, the persons included and the persons excluded shall be disclosed. If there have been any changes in the respective fiscal periods of the persons included made during the periods of the report which have a material effect on the financial statements, indicate clearly such changes and the manner of treatment.

(8) A statement shall be made in a note to the latest balance sheet of the amount and the accounting treatment of any difference between the investment of a bank and its consolidated subsidiaries, as shown in the consolidated balance sheet, in the unconsolidated subsidiaries and 50 per cent or less owned persons accounted for by the equity method, and their equity in the net assets of such unconsolidated subsidiaries and 50 per cent or less owned persons.

(g) *Statement of changes in equity capital.* A statement of changes in equity capital shall be filed with each statement of income filed pursuant to this part.

(h) *Statement of changes in financial position.* A statement of changes in financial position shall be filed with each statement of income filed pursuant to this part.

(i) *Schedules to be filed.* (1) The following schedules shall be filed with each balance sheet filed pursuant to this part: Schedule I—U.S. Treasury Securities, Obligations of other U.S. Government Agencies and Corporations, Obligations of States and Political Subdivisions, and Other Bonds, Notes and Debentures; Schedule III—Loans; and Schedule IV—Bank Premises and Equipment.

(2) The following schedule shall be filed with each statement of income filed pursuant to this part: Schedule II—Loans to Officers, Directors, Principal Security Holders, and any Associates of the Foregoing Persons; Schedule V—Investments in, Income from Dividends, and Equity in Earnings or Losses of Subsidiaries and Associated Companies; and Schedule VI—Allowance for Possible Loan Losses.

(3) Reference to the schedules referred to in paragraphs (1) and (2) of this paragraph (g) shall be made against the appropriate captions of the balance sheet or statement of income.

(4) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

[45 FR 65184, Oct. 2, 1980]

§ 206.8 Tender offers.

(a) *Scope of and definitions applicable to this section*—(1) *Scope.* (i) No person, directly or indirectly by use of the mails or any means or instrumentality of interstate commerce or any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of any class of equity security which is registered pursuant to section 12 of the Act, of a State member bank if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per cent of such class, unless on the date of the commencement of the tender offer such person has complied with the requirements of paragraph (c)(1) of this section. The definition of beneficial owner set forth in § 206.4(h)(5)(i) for the purposes of section 13(d)(1) of the Act shall apply also for purposes of section 14(d)(1) of the Act.

(2) *Definitions.* Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act and in § 206.2 promulgated thereunder. In addition, for purposes of sections 14(d) and 14(e) of the Act and this section the following definitions apply:

(i) The term "bidder" means any person who makes a tender offer or on whose behalf a tender offer is made;

(ii) The term "subject bank" means any State member bank which is the issuer of securities which are sought by a bidder pursuant to a tender offer;

(iii) The term "security holders" means holders of record and beneficial owners of securities which are the subject of a tender offer;

(iv) The term "beneficial owner" shall have the same meaning as that set forth in § 206.4(h)(5)(i): *Provided, however,* That, except with respect to paragraphs (c) and (i)(4) of this section and Item 6 of Form F-13, the term shall not include a person who does not have or share investment power or who may be deemed to be a beneficial owner by virtue of his right to acquire beneficial ownership as set forth in § 206.4(h)(5)(i).

(v) The term "tender offer material" means:

(A) The bidder's formal offer, including all the material terms and conditions of the tender offer and all amendments thereto;

(B) The related transmittal letter (whereby securities of the subject bank which are sought in the tender offer may be transmitted to the bidder or its depository) and all amendments thereto; and

(C) Press releases, advertisements, letters and other documents published by the bidder or sent or given by the bidder to security holders which, directly or indirectly, solicit, invite or request tenders of the securities being sought in the tender offer;

(vi) The term "business day" means any day, other than Saturday, Sunday or a Federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern time. In computing any time period under section 14(d)(5) or section 14(d)(6) of the Act or under 12 CFR Part 206 the date of the event which begins the running of such time period shall be included *except that* if such event occurs in other than a business day such period shall begin to run on an shall include the first business day thereafter; and

(vii) The term "security position listing" means, with respect to securites of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the bank's securities and of the participants' respective positions in such securities as of a specified date.

(b) *Date of commencement of a tender offer—(1) Commencement.* A tender offer shall commence for the purposes of section 14(d) of the Act and the rules promulgated thereunder at 12:01 a.m. on the date when the first of the following events occurs:

(i) The long-form publication of the tender offer is first published by the bidder pursuant to paragraph (d)(1)(i) of this section.

(ii) The summary advertisement of the tender offer is first published by the bidder pursuant to paragraph (d)(1)(i) of this section.

(iii) The summary advertisement or the long-form publication of the tender offer is first published by the bidder puruant to paragraph (d)(1)(i) of this section.

(iv) Definitive copies of a tender offer, in which the consideration offered by the bidder consists of securities registered pursuant to the Securities Act of 1933, are first published or sent or given by the bidder to security holders; or

(v) The tender offer is first published or sent or given to security holders by the bidder by any means not otherwise referred to in paragraphs (1)(i) through (1)(iv) of this paragraph (b).

(2) *Public announcement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which includes the information at paragraph (3) of this paragraph (b) with respect to a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed to constitute the commencement of a tender offer under paragraph (1)(v) of this paragraph (b) *except that* such tender offer shall not be deemed to be first published or sent or given to security holders by the bidder under paragraph (1)(v) of this paragraph (b) on the date of such public announcement if within five business days of such public announcement, the bidder *either:*

(i) Makes a subsequent public announcement stating that the bidder has determined not to continue with such tender offer, in which event paragraph (1)(v) of this paragraph (b) shall not apply to the intial public announcement; or

(ii) Complies with paragraph (c)(1) of this section and contemporaneously disseminates the disclosure required by paragraph (f) of this section to security holders pursuant to paragraph (d) of this section or otherwise in which event:

(A) The date of commencement of such tender offer under subparagraph (1) of this paragraph will be determined by the date the information required by paragraph (f) of this section is first published or sent or given to security holders pursuant to paragraph (d) of this section or otherwise; and

(B) Notwithstanding subparagraph (2)(ii)(A) of this paragraph, section 14(d)(7) of the Act shall be deemed to apply to such tender offer from the date of such public announcement.

(3) *Information.* The information referred to in paragraph (2) of this paragraph (b) is as follows:

(i) The identity of the bidder;

(ii) The identity of the subject company; and

(iii) The amount and class of securities being sought and the price or range of prices being offered therefor.

(4) *Announcements not resulting in commencement.* A public announcement by a bidder through a press release, newpaper advertisement or public statement which only discloses the information in paragraphs (4)(i) through (4)(iii) of this paragraph (b) concerning a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under paragraph (1)(v) of this paragraph (b).

(i) The identity of the bidder;

(ii) The identity of the subject company; and

(iii) A statement that the bidder intends to make a tender offer in the future for a class of equity securities of the subject bank which statement does not specify the amount of securities of such class to be sought or the consideration to be offered therefor.

(5) *Public announcement.* A public announcement concerning a tender offer by a bidder through a press release, newspaper advertisement or public statement which states that the offering will be made only by means of a prospectus and discloses the name of the bank and the title of the securities to be surrendered in exchange for the securities to be offered and the basis upon which the exchange may be made where the consideration consists solely or in part of securities to be registered under the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under paragraph (1)(v) of this paragraph (b): *Provided,* That such bidder files a registration statement with respect to such securities promptly after such public announcement.

(c) *Filing and transmission of tender offer statement*—(1) *Filing and transmittal.* No bidder shall make a tender offer if, after consummation thereof, such bidder would be the beneficial owner of more than 5 percent of the class of the subject bank securities for which the tender offer is made, unless as soon as practicable on the date of the commencement of the tender offer such bidder:

(i) Files with the Board six copies of a Tender Offer Statement on Form F-13 (12 CFR 206.82) including all exhibits thereto:

(ii) Hand delivers a copy of such Form F-13, including all exhibits thereto;

(A) To the subject bank at its principal executive office; and

(B) To any other bidder, which has filed a Form F-13 with the Board relating to a tender offer that has not yet terminated for the same class of securities of the subject bank, at such bidder's principal executive office or at the address of the person authorized to receive notices and communications (which is disclosed on the cover sheet of such other bidder's Form F-13);

(iii) Gives telephonic notice of the information required by paragraphs (f)(5)(ii) (A) and (B) of this section and mails by means of first class mail a copy of such Form F-13, including all exhibits thereto:

(A) To each national securities exchange where such class of the subject bank's securities is registered and listed for trading (which may be based upon information contained in the subject bank's most recent Annual Report on Form F-2 (12 CFR 206.42) filed with the Board unless the bidder has reason to believe that such information is not current) which telephonic notice shall be made when practicable prior to the opening of each such exchange; and

(B) To the National Association of Securities Dealers, Inc. ("NASD") if such class of the subject bank's securities are authorized for quotation in the NASDAQ interdealer quotation system.

(2) *Additional materials.* The bidder shall file with the Board six copies of any additional tender offer materials as an exhibit to the Form F-13 required by this section, and if a material change occurs in the information set forth in such Form F-13, six copies of an amendment to Form F-13 each of which shall include all exhibits other than those required by Item 11(a) of Form F-13 disclosing such change and shall send a copy of such additional tender offer material or such amendment to the subject bank and to any exchange and/or the NASD, as required by paragraph (1) of this paragraph (c), promptly but not later than the date such additional tender offer material or such change is first published, sent or given to security holders.

(3) *Certain announcements.* Notwithstanding the provisions of subparagraph (2) of this paragraph, if the additional tender offer material or an amendment to Form F-13 discloses only the number of shares deposited to date, and/or announces an extension of the time during which shares may be tendered, then the bidder may file such tender offer material or amendment and send a copy of such tender offer material or amendment to the subject bank, any exchange and/or the NASD, as required by paragraph (1) of this paragraph (c), promptly after the date such tender offer material is first published or sent or given to security holders.

(d) *Dissemination of certain tender offers*—(1) *Materials deemed published or sent or given.* A tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed "published or sent or given to security holders" within the meaning of section 14(d)(1) of the Act if the bidder complies with all of the requirements of any one of the following subparagraphs: *Provided, however,* That any such tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication, and the use of stockholder lists and security position listings pursuant to paragraph (e), paragraphs (d)(1) (ii) and (iii) are exclusive.

(i) *Long-form publication.* The bidder makes adequate publication in a newspaper of long-form publication of the tender offer.

(ii) *Summary publication.* (A) The bidder makes adequate publication in a newspaper or newspapers of a summary advertisement of the tender offer; and

(B) Mails by first class mail or otherwise furnishes with reasonable promptness the bidder's tender offer materials to any security holder who requests such tender offer materials pursuant to the summary advertisement or otherwise.

(iii) *Use of stockholder lists and security position listings.* Any bidder using stockholder lists and security position listings pursuant to paragraph (e) of this section shall comply with paragraph (1)(i) or (1)(ii) of this paragraph (d) on or prior to the date of the bidder's request for such lists or listing pursuant to paragraph (e)(1) of this section.

(2) *Adequate publication.* Depending on the facts and circumstances involved, adequate publication of a tender offer pursuant to this section may require publication in a newspaper with a national circulation or may only require publication in a newspaper with metropolitan or regional circulation or may require publication in a combination thereof: *Provided, however,* That publication in all editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication.

(3) *Publication of changes.* If a tender offer had been published or sent or given to security holders by one or more of the methods enumerated in paragraph (1) of this paragraph (d) a material change in the information published, sent or given to security holders shall be promptly disseminated to security holders in a manner reasonably designed to inform security holders of such change: *Provided, however,* That if the bidder has elected pursuant to paragraph (e)(6)(i) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to paragraph (e) of this section the bidder shall disseminate material changes in the information published or sent or given to security holders at least pursuant to paragraph (e) of this section.

(e) *Dissemination of certain tender offers by the use of stockholder lists*—(1) *Obligations of the subject bank.* Upon receipt by a subject bank at its principal executive offices of a bidder's written request, meeting the requirements of paragraph (e)(5) of this section, the subject shall comply with the following:

(i) The subject bank shall notify promptly transfer agents and any other person who will assist the subject in complying with the requirements of this paragraph of the receipt by the subject bank of a request by a bidder pursuant to this paragraph.

(ii) The subject bank shall promptly ascertain whether the most recently prepared stockholder list, written or otherwise, within the access of the subject bank was prepared as of a date earlier than ten business days before the date of the bidder's request and, if so, the subject bank shall promptly prepare or cause to be prepared a stockholder list as of the most recent practicable date which shall not be more than ten business days before the date of the bidder's request.

(iii) The subject bank shall make an election to comply and shall comply with all of the provisions of either paragraph (2) or paragraph (3) of this paragraph (e). The subject's bank's election, once made, shall not be modified or revoked during the bidder's tender offer and extensions thereof.

(iv) No later than the second business day after the date of the bidder's request, the subject bank shall orally notify the bidder, which notification shall be confirmed in writing, of the subject bank's election made pursuant to paragraph (1)(iii) of this paragraph (e). Such notification shall indicate (A) the approximate number of security holders of the class of securities being sought by the bidder and, (B) if the subject bank elects to comply with paragraph (2) of this paragraph (e), appropriate information concerning the location for delivery of the bidder's tender offer materials and the approximate direct costs incidental to the mailing to security holders of the bidder's tender offer materials computed in accordance with paragraph (7)(ii) of this paragraph (e).

(2) *Mailing of tender offer materials by the subject bank.* A subject bank which elects pursuant to paragraph

(1)(iii) of this paragraph (e) to comply with the provisions of this paragraph shall perform the acts prescribed by the following paragraphs.

(i) The subject bank shall promptly contact each participant named on the most recent security position listing of any clearing agency within the access of the subject bank and make inquiry of each such participant as to the approximate number of beneficial owners of the subject bank securities being sought in the tender offer held by each such participant.

(ii) No later than the third business day after delivery of the bidder's tender offer materials pursuant to paragraph (7)(i) of this paragraph (e), the subject bank shall begin to mail or cause to be mailed by means of first class mail a copy of the bidder's tender offer materials to each person whose name appears as a record holder of the class of securities for which the offer is made on the most recent stockholder list referred to in paragraph (1)(ii) of this paragraph (e). The subject bank shall use its best efforts to complete the mailing in a timely manner but in no event shall such mailings be completed in a substantially greater period of time than the subject bank would complete a mailing to security holders of its own materials relating to the tender offer.

(iii) No later than the third business day after the delivery of the bidder's tender offer materials pursuant to paragraph (7)(i) of this paragraph (e), the subject bank shall begin to transmit or cause to be transmitted a sufficient number of sets of the bidder's tender offer materials to the participants named on the security position listings described in paragraph (2)(i) of this paragraph (e). The subject bank shall use its best efforts to complete the transmittal in a timely manner but in no event shall such transmittal be completed in a substantially greater period of time than the subject bank would complete a transmittal to such participants pursuant to security position listings or clearing agencies of its own material relating to the tender offer.

(iv) The subject bank shall promptly give oral notification to the bidder, which notification shall be confirmed in writing, of the commencement of the mailing pursuant to paragraph (2)(ii) of this paragraph (e) and of the transmittal pursuant to paragraph (2)(iii) of this paragraph (e).

(v) During the tender offer and any extension thereof the subject bank shall use reasonable efforts to update the stockholder list and shall mail or cause to be mailed promptly following each update a copy of the bidder's tender offer materials (to the extent sufficient sets of such materials have been furnished by the bidder) to each person who has become a record holder since the later of (A) the date of preparation of the most recent stockholder list referred to in paragraph (e)(1)(ii) of this section or (B) the last preceding update.

(vi) If the bidder has elected pursuant to paragraph (6)(i) of this paragraph (e) to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph, the subject bank, promptly following delivery of each such amendment, shall mail or cause to be mailed a copy of each such amendment to each record holder whose name appears on the shareholder list described in paragraphs (1)(ii) and (2)(v) of this paragraph (e) and shall transmit or cause to be transmitted sufficient copies of such amendment to each participant named on security position listings who received sets of the bidder's tender offer materials pursuant to paragraph (2)(iii) of this paragraph (e).

(vii) The subject bank shall not include any communication other than the bidder's tender offer materials or amendments thereto in the envelopes or other containers furnished by the bidder.

(viii) Promptly following the termination of the tender offer, the subject bank shall reimburse the bidder the excess, if any, of the amounts advanced pursuant to paragraph (6)(iii)(C) over the direct cost incidential to compliance by the subject bank and its agents in performing the acts required by this paragraph computed in accordance with paragraph (7)(ii) of this paragraph (e).

(3) *Delivery of stockholder lists and security position listings.* A subject bank which elects pursuant to paragraph (1)(iii) of this paragraph (e) to comply with the provisions of this paragraph shall perform the acts prescribed by the following:

(i) No later than the third business day after the date of the bidder's request the subject bank shall furnish to the bidder at the subject bank's principal executive office a copy of the names and addresses of the record holders on the most recent stockholder list referred to in paragraph (1)(ii) of this paragraph (e) and a copy of the names and addresses of participants identified on the most recent security position listing of any clearing agency which is within the access of the subject bank.

(ii) If the bidder has elected pursuant to paragraph (6)(i) of this paragraph (e) to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials, the subject bank shall update the stockholder list by furnishing the bidder with the name and address of each record holder named on the stockholder list, and not previously furnished to the bidder, promptly after such information becomes available to the subject bank during the tender offer and any extensions thereof.

(4) *Liability of subject bank and others.* Neither the subject bank nor any affiliate or agent of the subject bank nor any clearing agency shall be:

(i) Deemed to have made a solicitation or recommendation respecting the tender offer within the meaning of section 14(d)(4) based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more requirements of this section;

(ii) Liable under any provision of the Federal securities laws to the bidder or to any security holder based solely upon the inaccuracy of the current names or addresses on the stockholder list or securities position listing, unless such inaccuracy results from a lack of reasonable care on the part of the subject bank or any affiliate or agent of the subject bank.

(iii) Deemed to be an "underwriter" within the meaning of section (2)(11) of the Securities Act of 1933 for any purpose of that Act or any rule or regulation promulgated thereunder based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more of the requirements of this paragraph;

(iv) Liable under any provision of the federal securities laws for the disclosure in the bidder's tender offer materials, including any amendment thereto, based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more of the requirements of this paragraph.

(5) *Content of the bidder's request.* The bidder's written request referred to in paragraph (1) of this paragraph (e) shall include the following:

(i) The identity of the bidder;

(ii) The title of the class of securities which is the subject of the bidder's tender offer;

(iii) A statement that the bidder is making a request to the subject bank pursuant to paragraph (1) of this paragraph (e) for the use of the stockholder list and security position listings for the purpose of disseminating a tender offer to security holders;

(iv) A statement that the bidder is aware of and will comply with the provisions of paragraph (6) of this paragraph (e);

(v) A statement as to whether or not it has elected pursuant to paragraph (6)(i) of this paragraph (e) to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph; and

(vi) The name, address and telephone number of the person whom the subject bank shall contact pursuant to paragraph (1)(iv) of this paragraph (e).

(6) *Obligations of the bidder.* Any bidder who requires that a subject bank comply with the provisions of paragraph (1) of this paragraph (e), shall comply with the following;

(i) The bidder shall make an election whether or not to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph, which election shall be included in the request referred to in paragraph (1) of this paragraph (e) and shall not be revocable by the bidder during the tender offer and extensions thereof.

(ii) With respect to a tender offer subject to section 14(d)(1) of the Act in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933, the bidder shall comply with the requirements of paragraph (d)(1)(iii) of this section.

(iii) If the subject bank elects to comply with paragraph (2) of this paragraph (e):

(A) The bidder shall promptly deliver the tender offer materials after receipt of the notification from the subject bank, as provided in paragraph (1)(iv) of this paragraph (e);

(B) The bidder shall promptly notify the subject bank of any amendment to the bidder's tender offer materials requiring compliance by the subject bank with paragraph (2)(vi) of this paragraph (e) and shall promptly deliver such amendment to the subject bank pursuant to paragraph (7)(i) of this paragraph (e);

(C) The bidder shall advance to the subject bank an amount equal to the approximate cost of conducting mailings to security holders computed in accordance with paragraph (7)(ii) of this paragraph (e);

(D) The bidder shall promptly reimburse the subject bank for the direct costs incidental to compliance by the subject bank and its agents in performing the act required by this section computed in accordance with paragraph (7)(ii) of this paragraph (e) which are in excess of the amount advanced pursuant to paragraph (6)(iii)(C) of this paragraph (e), and

(E) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials.

(iv) If the subject bank elects to comply with paragraph (3) of this paragraph (e):

(A) The subject bank shall use the stockholder and security position listings furnished to the bidder pursuant to paragraph (3) of this paragraph (e) exclusively in the dissemination of tender offer materials to security holders in connection with the bidder's tender offer and extensions thereof;

(B) The bidder shall return the stockholder lists and security position listings furnished to the bidder pursuant to paragraph (3) of this paragraph (e) promptly after the termination of the bidder's tender offer;

(C) The bidder shall accept, handle and return the stockholder lists and security position listings furnished to the bidder pursuant to paragraph (3) of this paragraph (e) to the subject bank on a confidential basis;

(D) The bidder shall not retain any stockholder list or security position listing furnished by the subject bank pursuant to paragraph (3) of this paragraph (e), or any copy thereof, nor retain any information derived from any such list or listing or copy thereof after the termination of the bidder's tender offer;

(E) The bidder shall mail by means of first class mail, at its own expense, a copy of its tender offer materials to each person whose identity appears on the stockholder list as furnished and updated by the subject bank pursuant to paragraphs (3)(i) and (3)(ii) of this paragraph (e);

(F) The bidder shall contact the participants named on the security position listing of any clearing agency, make inquiry of each participant as to the appropriate number of sets of tender offer materials required by each such participant, and furnish, at its own expense, sufficient sets of tender offer materials and any amendment thereto to each such participant for subsequent transmission to the beneficial owners of the securities being sought by the bidder;

(G) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials; and

(H) The bidder shall promptly reimburse the subject bank for direct costs incidental to compliance by the subject bank and its agents in performing the acts required by this section computed in accordance with paragraph (7)(ii) of this paragraph (e).

(7) *Delivery of materials, computation of direct costs.* (i) Whenever the bidder is required to deliver tender offer materials or amendments to tender offer materials, the bidder shall deliver to the subject bank at the location specified by the subject bank in its notice given pursuant to paragraph (1)(iv) of this paragraph (e) a number of sets of the materials or of the amendment, as the case may be, at least equal to the approximate number of security holders specified by the subject bank in such notice, together with appropriate envelopes or other containers therefor: *Provided, however,* That such delivery shall be deemed not to have been made unless the bidder has complied with paragraph (6)(iii)(C) of this paragraph (e) at the time the materials or amendments, as the case may be, are delivered.

(ii) The approximate direct cost of mailing the bidder's tender offer materials shall be computed by adding (A) the direct cost incidental to the mailing of the subject bank's last annual report to shareholders (excluding employee time), less the costs of preparation and printing of the report, and postage, plus (B) the amount of first class postage required to mail the bidder's tender offer materials. The approximate direct costs incidental to the mailing of the amendments to the bidder's tender offer materials shall be computed by adding (C) the estimated direct costs of preparing mailing labels, or updating shareholder lists and of third party handling charges plus (D) the amount of first class postage required to mail the bidder's amendment. Direct costs incidental to the mailing of the bidder's tender offer materials thereto when finally computed may include all reasonable charges paid by the subject bank to third parties for supplies or services, including costs attendant to preparing shareholder lists, mailing labels, handling the bidder's materials, contacting participants named on security position listings and for postage, but shall exclude indirect costs, such as employee time which is devoted to either contesting or supporting the tender offer on behalf of the subject bank. The final billing for direct costs shall be accompanied by an appropriate accounting in reasonable detail.

(f) *Disclosure requirements with respect to tender offers*—(1) *Information required on date of commencement.*—(i) *Long-form publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of long-form publication pursuant to paragraph (d)(1)(i) of this section such long-form publication shall include the information required by paragraph (5)(i) of this paragraph (f).

(ii) *Summary publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of summary publication pursuant to paragraph (d)(1)(ii) of this section:

(A) The summary advertisement shall contain and shall be limited to, the information required by paragraph (5)(ii) of this paragraph (f); and

(B) The tender offer materials furnished by the bidder upon the request of any security holder shall include the information required by paragraph (5)(i) of this paragraph (f).

(iii) *Use of stockholder lists and security position listings.* If a tender offer is published or sent or given to security holders on the date of commencement by the use of stockholder lists and security position listings pursuant to paragraph (d)(1)(iii) of this section:

(A) Either (*1*) the summary advertisement shall contain, and shall be limited to the information required by paragraph (5)(ii) of this paragraph (f), or (*2*) if long-form publication of the tender offer is made, such long-form publication shall include the information required by paragraph (5)(i) of this paragraph (f), and

(B) The tender offer materials transmitted to security holders pursuant to such lists and security position listings and furnished by the bidder upon the request of any security holder shall include the information required by paragraph (5)(i) of this paragraph (f).

(iv) *Other tender offers.* If a tender offer is published or sent or given to security holders other than pursuant to paragraph (d)(1) of this section the tender offer materials that are published or sent or given to security holders on the date of commencement of such offer shall include the information required by paragraph (5)(i) of this paragraph (f).

(2) *Information required in summary advertisement made after commencement.* A summary advertisement published subsequent to the date of commencement of the tender offer shall include at least the information specified in paragraphs (5)(i) (A) through (D) and (5)(ii)(D) of this paragraph (f).

(3) *Information required in other tender offer materials published after commencement.* Except for summary advertisements described in paragraph (2) of this paragraph (f) and tender offer materials described in paragraphs (1)(ii)(B) and (1)(iii)(B) of this paragraph (f), additional tender offer materials published, sent or given to security holders subsequent to the date of commencement shall include the information required by paragraphs (5)(i) of this paragraph (f) and may omit any of the information required by paragraphs (5)(i) (E) through (H) of this paragraph (f) which has been previously furnished by the bidder in connection with the tender offer.

(4) *Material changes.* A material change in the information published or sent or given to security holders shall be promptly disclosed to security holders in additional tender offer materials.

(5) *Information to be included*—(i) *Long-form publication and tender offer materials.* The information required to be disclosed by paragraphs (1)(i), (1)(ii)(B), (1)(iii) (A) and (B) and (1)(iv) of this paragraph (f) shall include the following:

(A) The identity of the holder;

(B) The identity of the subject bank;

(C) The amount of class of securities being sought and the type and amount of consideration being offered therefor;

(D) The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer;

(E) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities pursuant to section 14(d)(5) of the Act and paragraph (g) of this section and the manner in which shares will be accepted for payment and in which withdrawal may be effected;

(F) If the tender offer is for less than all the outstanding securities of a class of equity securities and the bidder is not obligated to purchase all of the securities tendered, the period or periods, and in the case of the period from the commencement of the offer, the date of the expiration of such period during which the securities will be taken up pro rata pursuant to section 14(d)(6) of the Act or paragraph (h) and the present intention or plan of the bidder with respect to the tender offer in the event of an oversubscription by security holders;

(G) The disclosure required by Items 1(c); 2 (with respect to persons other than the bidder, excluding sub-items (b) and (d)); 3; 4; 5; 6; 7; 8; and 10 of Form F-13 (12 CFR 206.82) or a fair and adequate summary thereof; *Provided, however,* That negative responses to any such item or sub-item of Form F-13 need not be included; and

(H) The disclosure required by Item 9 of Form F-13 or a fair and adequate summary thereof. If the information required by Item 9 is summarized, appropriate instructions shall be included stating how complete financial information can be obtained.

(ii) *Summary publication.* The information required to be disclosed by paragraphs (1)(ii)(A) and (1)(iii)(A) of this paragraph (f) in a summary advertisement is as follows:

(A) The information required by paragraphs (5)(i) (A) through (F) of this paragraph (f);

(B) If the tender offer is for less than all the outstanding securities of a class of equity securities, a statement as to whether the purpose or one of the purposes of the tender offer is to acquire or influence control of the business of the subject bank;

(C) A statement that the information required by paragraph (5)(i)(G) of this paragraph (f) is incorporated by reference into the summary advertisement;

(D) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and

(E) In a tender offer published or sent or given to security holders by the use of stockholder lists and security position listings pursuant to paragraph (d)(1)(iii) of this section a statement that a request is being made for such lists and listings and that tender offer materials will be mailed to record holders and will be furnished to brokers, banks and similar persons whose name appears or whose nominee appears on the list of stockholders or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of such securities.

(iii) *No transmittal letter.* Neither the initial summary advertisement nor any subsequent summary advertisement shall include a transmittal letter (whereby securities of the subject bank which are sought in the tender offer may be transmitted to the bidder or its depository) or any amendment thereto.

(g) *Additional withdrawal rights*—(1) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the following periods:

(i) At any time until the expiration of 15 business days from the date of commencement of such tender offer; and

(ii) On the date and until the expiration of ten business days following the date of commencement of another bidder's tender offer other than pursuant to paragraph (b)(2) of this section for securities of the same class: *Provided,* That the bidder has received notice or otherwise has knowledge of the commencement of such other tender offer: *And, provided further,* That withdrawal may only be effected with respect to securities which have not been accepted for payment in the manner set forth in the bidder's tender offer prior to the date such other tender offer is first published, sent or given to security holders.

(2) *Computation of time periods.* The time periods for withdrawal rights pursuant to this section shall be computed on a concurrent, as opposed to a consecutive basis.

(3) *Knowledge of competing offer.* For the purposes of this section, a bidder shall be presumed to have knowledge of another tender offer, as described in paragraph (1)(ii) of this paragraph (g), on the date such bidder receives a copy of the Form F-13 (12 CFR 206.82) pursuant to paragraph (c) of this section from such other bidder.

(4) *Notice of withdrawal.* Notice of withdrawal pursuant to this paragraph shall be deemed to be timely upon the receipt by the bidder's depository of a written notice of withdrawal specifying the name(s) of the tendering stockholder(s), the number or amount of the securities to be withdrawn and the name(s) in which the certificate(s) is (are) registered, if different from that of the tendering security holder(s). A bidder may impose other reasonable requirements, including certificate numbers and a signed request for withdrawal accompanied by a signature guarantee, as conditions precedent to the physical release of withdrawn securities.

(h) *Exemption from statutory pro rata requirements.* The limited pro rata provisions of section 14(d)(6) of the Act shall not apply to any tender offer for less than all the outstanding securities of the class for which the tender offer is made to the extent that the bidder provides in the tender offer materials disseminated to security holders on the date of commencement of the tender offer that in the event more securities are deposited during the period(s) described in paragraphs (1) and/or (2) of this paragraph (h) than the bidder is bound or willing to accept for payment, all securities deposited during such period(s) will be acceptable for payment as nearly as practicable on a pro rata basis, disregarding fractions, according to the number of securities deposited by each depositor.

(1) Any period which exceeds ten days from the date of commencement of the tender offer.

(2) Any period which exceeds ten days from the date that notice of an

increase in the consideration offered is first published, sent or given to security holders.

(i) *Solicitations/recommendations statements with respect to certain tender offers*—(1) *Filing and transmittal of recommendation statement.* No solicitation or recommendation to security holders shall be made by recommendation to security holders shall be made by any person described in paragraph (4) of this paragraph (i) with respect to a tender offer for such securities unless as soon as practicable on the earliest date such solicitation or recommendation is first published or sent or given to security holders such person complies with the following paragraphs.

(i) Such person shall file with the Board six copies of a Tender Offer Solicitation/Recommendation Statement on Form F-12 (12 CFR 206.81) including all exhibits thereto; and

(ii) If such person is either the subject bank or an affiliate of the subject bank,

(A) Such person shall deliver a copy of the Form F-12 to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Form F-13 (12 CFR 206.82) filed with the Commission; and

(B) Such person shall give telephonic notice (which notice to the extent possible shall be given prior to the opening of the market) of the information required by Items 2 and 4(a) of Form F-12 and shall mail a copy of the Form to each national securities exchange where the class of securities is registered and listed for trading and, if the class is authorized for quotation in the NASDAQ interdealer quotation system, to the National Association of Securities Dealers, Inc. ("NASD").

(iii) If such person is neither the subject bank nor an affiliate of the subject bank,

(A) Such person shall mail a copy of the schedule to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Form F-13 filed with the Board), and

(B) Such person shall mail a copy of the Form to the subject bank at its principal office.

(2) *Amendments.* If any material change occurs in the information set forth in the Form F-12 required by this section, the person who filed such Form F-12 shall:

(i) File with the Board six copies of an amendment on Form F-12 disclosing such change promptly, but not later than the date such material is first published, sent or given to security holders; and

(ii) Promptly deliver copies and give notice of the amendment in the same manner as that specified in paragraph (1)(ii) or paragraph (1)(iii) of this paragraph (i), whichever is applicable; and

(iii) Promptly disclose and disseminate such change in a manner reasonably designed to inform security holders of such change.

(3) *Information required in solicitation or recommendation.* Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1, 2, 3(b), 4, 6, 7 and 8 of Form F-12 or a fair and adequate summary thereof: *Provided, however,* That such solicitation or recommendation may omit any such information previously furnished to security holders of such class of securities by such person with respect to such tender offer.

(4) *Applicability.* (i) Except as is provided in paragraphs (4)(ii) and (5) of this paragraph (i), paragraph (i) shall only apply to the following persons:

(A) The subject bank, any director, officer, employee, affiliate or subsidiary of the subject bank;

(B) Any record holder or beneficial owner of any security issued by the subject bank, by the bidder, or by any affiliate of either the subject bank or the bidder; and

(C) Any person who makes a solicitation or recommendation to security holders on behalf of any of the foregoing or on behalf of the bidder other than by means of a solicitation or recommendation to security holders which has been filed with the board pursuant to this paragraph or paragraph (c) of this section.

(ii) Notwithstanding paragraph (4)(i) of this paragraph (i), paragraph (i) shall not apply to the following persons:

(A) A bidder who has filed a Form F-13 pursuant to paragraph (c) of this section;

(B) Attorneys, banks, brokers, fiduciaries or investment advisers who are not participating in a tender offer in more than a ministerial capacity and who furnish information and/or advice regarding such tender offer to their customers or clients on the unsolicited request and such customers or clients or solely pursuant to a contract or a relationship providing for advice to the customer or client to whom the information and/or advice is given.

(5) *Stop-look-and-listen communication.* Paragraph (i) shall not apply to the subject bank with respect to a communication by the subject bank to its security holders which only:

(i) Identifies the tender offer by the bidder;

(ii) States that such tender offer is under consideration by the subject bank's board of directors and/or management;

(iii) States that on or before a specified date (which shall be no later than 10 business days from the date of commencement of such tender offer) the subject bank will advise such security holders of (A) whether the subject bank recommends acceptance or rejection of such tender offer; expresses no opinion and remains neutral toward such tender offer; or is unable to take a position with respect to such tender offer and (B) the reason(s) for the position taken by the subject bank with respect to the tender offer (including the inability to take a position); and

(iv) Requests such security holders to deter making a determination whether to accept or reject such tender offer until they have been advised of the subject bank's position with respect thereto pursuant to paragraph (5)(iii) of this paragraph (i).

(6) *Statement of management's position.* A statement by the subject bank of its position with respect to a tender offer which is required to be published or sent or given to security holders pursuant to paragraph (m) of this section shall be deemed to constitute a solicitation or recommendation within the meaning of this section and section 14(d)(4) of the Act.

(j)-(l) [Reserved]

(m) *Unlawful tender offer practices.* No person who makes a tender offer shall:

(1) Hold such tender offer open for less than twenty business days from the date such offer is first published or sent or given to security holders.

(2) Increase the offered consideration or the dealer's soliciting fee to be given in tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase is first published, sent or given to security holders.

(3) Fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer.

(4) Extend the length of a tender offer without issuing a notice of such extension by press release or other public announcement, which notice shall include disclosure of the approximate number of securities deposited to date and shall be issued no later than the earlier of (i) 9:00 a.m. Eastern time, on the next business day after the scheduled expiration date of the offer or (ii), if the class of securities which is the subject of the tender offer is registered on one or more national securities exchanges, the first opening of any one of such exchanges on the next business day after the scheduled expiration date of the offer.

(5) *Position of subject bank.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of section 14(e) of the Act, the subject bank, no later than 10 business days from the date the tender offer is first published or sent or given, shall publish, send or give to security holders a statement disclosing that the subject bank:

(i) Recommends acceptance or rejection of the bidder's tender offer;

(ii) Expresses no opinion and is remaining neutral toward the bidder's tender offer; or

(iii) Is unable to take a position with respect to the bidder's tender offer. Such statement shall also include the reason(s) for the position (including the inability to take a position) disclosed therein.

(6) *Material change.* If any material change occurs in the disclosure required by this section, the subject bank shall promptly publish, send or give a statement disclosing such material change to security holders.

(n) *Material change.* If any material change occurs in the facts set forth in the statement required by paragraph (c)(1) of this section, the person who filed such statement shall promptly file with the Board an amendment disclosing such change.

(o) *Restrictions on control persons.* When a person makes a tender offer for, or a request or invitation for tenders of, any class of equity securities of a bank registered pursuant to section 12 of the Act, and such person has filed a statement with the Board pursuant to this section, any other person controlling, or controlled by or under common control with ("control person"), the issuing bank shall not thereafter, during the period such tender offer, request or invitation continues, purchase any class of equity securities of the issuing bank unless:

(1) The control person has filed with the Board a statement containing the information specified below with respect to any proposed purchases:

(i) The title and amount of equity securities to be purchased, the names of the persons or classes or persons from whom, and the market in which, the securities are to be purchased, including the name of any exchange on which the purchase is to be made;

(ii) The purpose for which the purchase is to be made and any plan or proposal for the disposition of such securities; and

(iii) The source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto.

(2) The control person has at any time within the past 6 months sent or given to the equity security holders of the issuing bank the substance of the information contained in the statement required by paragraph (o)(1) of this section and a copy has been filed with the Board.

[46 FR 11242, Feb. 6, 1981]

FORMS

§ 206.41 Form for registration of securities of a bank pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (Form F-1).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FORM F-1

REGISTRATION STATEMENT FOR SECURITIES OF A BANK

Pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934

______ (Exact name of bank as specified in charter)

______ (Address of principal office)

______ (I.R.S. Employer Identification No.)

______ (Bank's telephone number, including area code).

Title of each class of securities being registered pursuant to section 12(g) of the Act:[1]

Title of class.

Name of each exchange on which class is being registered.

Title of each class of securities being registered pursuant to section 12(g) of the Act:[1]

GENERAL INSTRUCTIONS

Form F-1 shall be used for registration pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934 of classes of securities of issuers that are State-chartered banks that are members of the Federal Reserve System. This form is not to be used as a blank form to be filled in but only as a guide in the preparation of a registration statement. Particular attention should be given to the definitions in § 206.2 and the general requirements in § 206.4 of this part. Unless otherwise stated, the information required shall be given as of a date reasonably close to the date of filing the statement.

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[1] If none, so state.

The statement shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers with respect thereto are prepared in the manner specified in § 206.4(u). Attention is directed to § 206.4(j) which states: "In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading."

Section 206.4(s) requires that four complete copies of the registration statement, including financial statements, exhibits and all other papers and documents filed as a part thereof, and four additional copies which need not include exhibits, shall be filed with the Board. At least one complete copy of the registration statement, including financial statements, exhibits and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities is to be registered. At least one complete copy of the registration statement filed with the Board and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

Information required by any item or other requirement of this form with respect to any foreign subsidiary may be omitted to the extent that the required disclosure would be detrimental to the registrant. However, financial statements, otherwise required, shall not be omitted pursuant to this instruction. Where information is omitted pursuant to this instruction, a statement shall be made that such information has been omitted and the names of the subsidiaries involved shall be separately furnished to the Board. The Board may, in its discretion, call for justification that the required disclosure would be detrimental.

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 1. General Information.

State the year in which the bank was organized. If organized as a national bank, state the year of conversion into a State bank. Indicate the approximate number of holders of record of each class of equity securities of the bank.

Item 2. Parents and Subsidiaries of the Bank.

(a) List all parents of the bank, showing the basis of control and, as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.

(b) Furnish a list or diagram of all subsidiaries of the bank and, as to each subsidiary, indicate (1) the State or other jurisdiction under the laws of which it was organized, and (2) the percentage of voting securities owned or other basis of control by its immediate parent. Designate (i) subsidiaries for which separate financial statements are filed; (ii) subsidiaries included in consolidated financial statements; (iii) subsidiaries included in group financial statements filed for unconsolidated subsidiaries; and (iv) subsidiaries for which no financial statements are filed, indicating briefly why statements of such subsidiaries are not filed.

Instructions. 1. Include the bank and show clearly the relationship of each person named to the bank and the other persons named, including the percentage of voting securities of the bank owned or other basis of control by its immediate parent. The names of particular subsidiaries may be omitted if the unnamed subsidiaries considered in the aggregate as a single subsidiary would not constitute a significant subsidiary.

2. In case the bank owns, directly or indirectly, approximately 50 percent of the voting securities of any person and approximately 50 percent of the voting securities of such person are owned directly or indirectly by another single interest, or if the bank takes up the equity in undistributed earnings of any other unconsolidated person, such person shall be deemed to be a subsidiary for the purpose of this item.

NOTE: If any person is controlled by means of the direct ownership of its securities by two or more persons listed in response to this item, so indicate by appropriate cross reference.

(c) Describe any contractual arrangement, known to the bank, including any pledge of securities of the bank or any of its parents the operation of the terms of which may at a subsequent date result in a change of control of the bank.

Instruction. This paragraph does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the registrant.

Item 3. Description of Business.

Describe briefly the business done or intended to be done by the bank and any significant developments or trends in such business occurring over the preceding five years. Information should be furnished as to any mergers, consolidations, or other acquisitions of assets of any other person that were consummated during such period. State the number of banking offices in each city (or county) in the United States in which the bank has offices and the number of banking offices located in each foreign country or jurisdiction. In describing the business done by the bank, the business of its subsidiaries should be included only insofar as the same is important to an understanding of the character and development of the business conducted by the total enterprise.

(a) The description shall include, without limitation, information as to matters such as the following:

(1) Competitive conditions in the market areas involved and the competitive position of the bank, if known or reasonably available to the bank. If several services are involved, separate consideration shall be given to the principal services or classes of services.

(2) The principal services rendered by the bank, including any significant changes in the kinds of services rendered, during the past three fiscal years.

(3) The estimated dollar amount, if material, spent during each of the last two fiscal years for the development of new services or the improvement of existing services.

(4) The number of persons employed by the bank.

(5) The extent to which the business of the bank or a material portion thereof is or may be seasonal.

(6) Present in tabular form, for each of the three years for which a statement of income is being furnished, ratios of the bank's net income to the following items: (a) Average equity capital accounts, and (b) average daily total deposits. Ratios for such periods of average daily loans to average daily deposits should also be included.

(7) If more than 25 percent of the bank's loans are concentrated in any one of the categories specified in Schedule III of Form F-9D, or if more than 10 percent of the bank's loans in any particular category specified in Schedule III of Form F-9D represent the indebtedness of persons or firms in a particular industry (for example, electronics or real estate investment trusts), the category of loans, the particular industry or industries involved, and the percentages that the amounts of such loans bear to the total amount of the bank's loans and to the total amount of the bank's loans in the pertinent category in Schedule III.

(8) The dollar amounts of loan and other commitments as of the end of the last fiscal year and previous fiscal year, indicating also the portions thereof reasonably expected to be exercised within the current fiscal year.

Instructions. 1. If the bank proposes to enter, or has recently entered or introduced a new service requiring the investment of a material amount of its total assets, provide as supplemental information at the time of filing of the registration statement, but not as a part thereof, a copy of any studies conducted or performed by or for the bank relating to such business, and a statement as to the actual or proposed use of such study. Where material, disclosure of the absence of such a study is required.

2. The principal methods of competition (e.g., rate service) should be identified and positive and negative factors pertaining to the competitive position of the bank, to the extent that they exist, should be explained, if known or reasonably available to the bank. An estimate of the number of competitors should be included, and where material, the particular market areas in which the bank competes should be identified. Where one or a small number of competitors are dominant, they should be identified.

3. The description shall not relate to the powers and objects specified in the charter, but to the actual business done and intended to be done. Include the business of subsidiaries of the bank insofar as is necessary to understand the character and development of the business conducted by the total enterprise.

4. In describing developments, information shall be given as to matters such as the following: the nature and results of any other material reorganization, readjustment or succession of the registrant or any of its significant subsidiaries; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business.

5. Appropriate disclosure shall also be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the bank and its subsidiaries.

6. The business of a predecessor or predecessors shall be deemed to be the business of the bank for the purpose of this item.

7. Appropriate disclosure shall be made with respect to any material portion of the business, e.g. deposits which may be subject to termination at the election of state, local, or Federal governments, or any other depositor.

(b) If the bank and its subsidiaries engage in material operations in foreign countries, or if a material portion of revenues is derived from customers in foreign countries, appropriate disclosure shall be made with respect to the importance of that part of the business to the bank and the risks attendant thereto. Insofar as practicable, furnish information with respect to volume and profitability of such operations.

(c) The Board may, upon written request of the bank, and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution therefor of appropriate information of comparable character. The Board may also require the furnishing of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for an adequate description of the business done or intended to be done.

Item 4. Summary of Operations.

Furnish in comparative columnar form a summary of operations for the bank or for the bank and its subsidiaries consolidated, as appropriate, for—

(a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the summary from being misleading.

Where necessary, include information or explanation of material significance to investors in appraising the results shown, or refer to such information or explanation set forth elsewhere in the registration statement.

Instruction. 1. As a minimum, operating income, operating expenses, income before income taxes and security gains (losses), applicable income taxes, income before security gains (losses), security gains (losses), and net income should be presented. The summary shall reflect retroactive adjustments of any material items affecting the comparability of the results.

2. Per share earnings and dividends declared for each period of the summary shall be also shown. The basis of the computation of per share earnings shall be stated, together with the number of shares used in the computation. The bank shall file as an exhibit a statement setting forth in reasonable detail the computation of per share earnings, unless the computation can be clearly determined from the answer to this item.

3. (a) If debt securities are being registered, the bank may, at its option, show in tabular form for each fiscal year the ratio of earnings to fixed charges. Such ratio shall be calculated both on the basis of excluding interest on deposits and including interest on deposits as part of "fixed charges."

(b) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income or unconsolidated subsidiaries and 50 per cent or less owned persons.

(c) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case.

(d) Any bank electing to show the ratio of earnings to fixed charges, in accordance with this instruction, shall file as an exhibit a statement setting forth in reasonable detail the computations of the ratios shown.

Item 5. Description of bank premises and other real estate.

Describe briefly, individually or by categories, (a) properties held in fee, by the bank and its subsidiaries, in which the banking offices are located, indicating any major encumbrances with respect thereto, and (b) other real estate of material value that is owned by the bank. In the event aggregate annual rentals paid during the bank's last fiscal year exceeded 5 per cent of its operating expenses, state the amount of such rentals, the average term of the leases pursuant to which such rentals were paid, and the expiration dates of any material leases.

Item 6. Organization within five years. If the bank was organized within the past five years, furnish the following information.

(a) State the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options, or rights of any kind) received or to be received by each promoter directly or indirectly from the bank, and the nature and amount of any assets, services, or other consideration therefor received or to be received by the bank.

(b) As to any assets acquired or to be acquired by the bank from a promoter, state the amount at which acquired or to be acquired and the principle followed or to be followed in determining the amount. Identify the persons making the determination and state their relationship, if any, with the bank or any promoter. If the assets were acquired by the promoter within 2 years prior to their transfer to the bank, state the cost thereof to the promoter.

Item 7. Pending Legal Proceedings.

Describe briefly any material pending legal proceedings, other than ordinary routine proceedings incidental to the business, to which the bank or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings were instituted, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions. 1. No collection action or other claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to proceedings that involve principally claims for damages if the aggregate amount involved does not exceed 10 percent of the equity capital accounts of the bank. If, however, any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the

amount involved in such other proceedings shall be included in computing such percentage.

3. Any material proceedings to which any director, officer, or affiliate of the bank, any security holder named in answer to Item 12(a), or any association of any such director, officer, or security holder, is a party, or has a material interest, adverse to the bank or any of its subsidiaries shall also be described.

4. Notwithstanding the foregoing, administrative or judicial proceedings arising under any Federal, State or local provisions which have been enacted or adopted relating to the protection of the environment, shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the bank or if it involves primarily a claim for damages and the amount involved exclusive of interest and costs, exceeds 10 percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of equity capital accounts on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business"; provided however, that such proceedings which are similar in nature may be grouped and described generically stating: the number of such proceedings in each group; a generic description of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the bank, the effect of such proceedings on the business or financial condition of the bank.

Item 8. Directors and Officers.

(a) The information required by Item 6(a)-(e) of § 206.51 shall be reported pursuant to this Item for both officers and directors. The term "officer" is defined in § 206.2(q).

Instruction. Do not include arrangements or understandings with directors or officers of the bank acting solely in their capacities as such.

(b) *Identification of certain significant employees.* Where the bank employs persons such as special consultants or attorneys who are not officers, but who make or are expected to make significant contributions to the business of the bank, such persons should be identified and their background disclosed to the same extent as in the case of officers.

Instruction. The term "family relationship" means any relationship by blood, marriage or adoption, not more remote than first cousin.

(c) *Business experience.* When an officer or person named in response to paragraph (b), has been employed by the bank or a subsidiary of the bank for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions in order to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(d) Describe any of the following events which occurred during the past ten years and which are material to an evaluation of ability and integrity of any director or officer of the bank.

(1) A petition under the Bankruptcy Act or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of, such person, or any partnership in which he was a general partner at or within 2 years before the time of such filing, or any corporation or business associations of which he was an officer at or within 2 years before the time of such filing.

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses) or is the subject of a criminal proceeding which is presently pending; or

(3) Such person was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining him from acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security, or was the subject of any order of a Federal or State authority barring or suspending, for more than 60 days, the right of such person to be engaged in any such activity or to be associated with persons engaged in any such activity, which order has not been reversed or suspended.

Instruction. If any event specified in paragraph (d) has occurred but information in regard thereto is omitted on the ground that it is not material, the bank shall furnish, as supplemental information and not as a part of the registration statement, a description of the event and a statement of the reasons for the omission of information in regard thereto.

Item 9. Indemnification of directors and officers.

State the general effect of any charter provision, by-law, contract, arrangement, or statute under which any director or officer of the bank is insured or indemnified in any manner against any liability that he may incur in his capacity as such.

Item 10. Remuneration and other transactions with management and others.

(a) The information required by Item 7(a), (b), (d), (e), (f) and (g) of Form F-5 at § 206.51 shall be reported pursuant to this Item. The information required by Item 7(d), (e) and (f) of Form F-5 at § 206.51 shall be reported for the past three years.

Item 11. Management Options to Purchase Securities.

The information required by Item 7(c) of Form F-5 at § 206.51 shall be reported pursuant to this Item.

Item 12. Security Ownership of Certain Beneficial Owners and Management.

The information required by Items 5(d), (e) and (g) of Form F-5 at § 206.51, shall be reported pursuant to this Item.

Item 13. Capital stock being registered. If capital stock is being registered, state the title of the class and furnish the following information:

(a) Outline briefly (1) dividend rights; (2) voting rights; (3) liquidation rights; (4) preemptive rights; (5) conversion rights; (6) redemption provisions; (7) sinking fund provisions; and (8) liability to further calls or to assessment by the bank.

(b) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(c) Outline briefly any restriction on the repurchase or redemption of shares by the bank while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

Instructions. 1. This item requires only a brief summary of the provisions that are pertinent from an investment standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the governing instruments verbatim; only a succinct resume is required.

2. If the rights evidenced by the securities being registered are materially limited or qualified by the rights of any other class of securities or by the provisions of any contract or other document, include such information regarding such other securities being registered. If any securities being registered are to be offered in exchange for other securities, an appropriate description of such other securities shall be given. No information need be given, however, as to any class of securities all of which will be redeemed and retired if appropriate steps to assure such redemption and retirement will be taken prior to registration of the securities being registered.

Item 14. Long-Term Debt Being Registered.

If long-term debt is being registered, outline briefly such of the following as are relevant:

(a) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund, or retirement.

(b) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets or the creation or maintenance of reserves or the maintenance of properties.

(c) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

(d) The name of the trustee and the nature of any material relationship with the bank or any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action, and what indemnification the trustee may require before proceeding to enforce the lien.

(e) Provisions with respect to the kind and priority of any lien, securing the issue, together with a brief identification of the principal properties subject to each lien.

Instruction. 1. The instructions to Item 14 shall apply to this item.

2. Provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property or property taken by eminent domain, the application of insurance moneys, and similar provisions, need not be described in answer to paragraph (c).

Item 15. Other Securities Being Registered.

If securities other than capital stock or long-term debt are being registered, outline briefly the rights evidenced thereby. If subscription warrants or rights are being registered, state the title and amount of securities called for, the period during which and the price at which the warrants or rights are exercisable.

Instruction. The instructions to Item 14 shall also apply to this item.

Item 16. Recent Sales of Securities.

Furnish the following information as to all securities of the bank sold by the bank within the past three years or presently proposed to be sold. Include securities issued in exchange for property, services, or other securities and new securities resulting from the modification of outstanding securities.

(a) Give the date of sale, title, and amount of securities sold.

(b) Give the names of the principal underwriters, if any. As to any securities sold privately, name the persons or identify the class of persons to whom the securities were sold.

(c) As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or commissions. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the bank.

(d) Give a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds have been or are to be used and the approximate amount to be used for each purpose.

Instructions. (1) Information need not be set forth as to notes, drafts, bills of exchange, or bank acceptances that mature not later than 12 months from the date of issuance.

(2) If the sales were made in a series of transactions, the information may be given by such totals and periods as will reasonably convey the information required.

Item 17. Nature of Trading Market.

As to each class of securities to be registered pursuant to section 12(g) of the Act, state briefly the nature of the trading market, if any, in such securities, including the names of the principal market makers and the reported high and low bid prices for each quarterly period during the past three years. If bank securitis are inactively traded, so state and indicate the range of sales prices known to management for each such period and the source of such information.

Item 18. Applicability of State Laws.

Describe briefly the manner in which the laws of the State under the laws of which the bank is chartered may materially affect:

(a) *De novo branching;*

(b) *Mergers;*

(c) *Interest rates on loans; and*

(d) *Bank holding companies.*

Item 19. Financial statements and exhibits.

List all financial statements and exhibits filed as a part of the registration statement.

(a) Financial statements.

(b) Exhibits.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the bank has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

———————————
(Name of bank)
Date——— By ———
(Name and title of signing officer)

INSTRUCTIONS AS TO FINANCIAL STATEMENTS

These instructions specify the balance sheets and statements of income required to be filed as a part of a Registration Statement on this form. Section 206.7 of this part governs the verification form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts , *statement of changes in financial position,* and the schedules to be filed in support thereof.

A. *Financial statements of the bank.* 1. *Balance sheets.* (a) The bank shall file a verified balance sheet as of the close of its latest fiscal year unless such fiscal year has ended within 90 days prior to the date of filing the Registration Statement, in which case the balance sheet may be as of the close of the preceding fiscal year.

(b) If the latest fiscal year of the bank has ended within 90 days prior to the date of filing the Registration Statement and the balance sheet required by paragraph (a) is filed as of the end of the preceding fiscal year, there shall be filed as an amendment to the Registration Statement, within 120 days after the date of filing, a verified balance sheet of the bank as of the end of the latest fiscal year.

2. *Statements of income.* (a) The bank shall file verified statements of income for each of the three fiscal years preceding the date of the balance sheet required by Instruction 1(a).

(b) There shall be filed with each balance sheet filed pursuant to Instruction 1(b) a verified statement of income of the bank for the fiscal year immediately preceding the date of the balance sheet.

3. *Omission of bank's financial statements in certain cases.* Notwithstanding Instructions 1 and 2, the individual financial statements of the bank may be omitted if consolidated statements of the bank and one or more of its subsidiaries are filed.

B. *Consolidated statements.* 4. *Consolidated balance sheets.* (a) There shall be filed a verified consolidated balance sheet of the bank and its majority-owned (i) bank premises subsidiaries, (ii) subsidiaries operating under the provisions of sections 25 or 25(a) of the Federal Reserve Act ("Agreement Corporations" and "Edge Act Corporations"), and (iii) significant subsidiaries, as of the close of the latest fiscal year of the bank, unless such fiscal year has ended within 90 days prior to the date of filing the Registration Statement, in which case this balance sheet may be as of the close of the preceding fiscal year.

(b) If the latest fiscal year of the bank has ended within 90 days prior to the date of filing the Registration Statement, and the balance sheet required by paragraph (a) is filed as of the end of the preceding fiscal year, there shall be filed as an amendment to the Registration Statement, within 120 days after the date of filing, a verified consolidated balance sheet of the bank and such subsidiaries as of the end of the latest fiscal year.

5. *Consolidated statement of income.* (a) There shall be filed verified statements of income of the bank and its majority-owned (i) bank premises subsidiaries, (ii) subsidiaries operating under the provisions of section 25 or 25(a) of the Federal Reserve Act ("Agreement Corporations" and "Edge Act Corporations"), and (iii) significant subsidiaries, for each of the three fiscal years preceding the date of the consolidated balance sheet required by Instruction 4(a).

(b) There shall be filed with each balance sheet filed pursuant to Instruction 4(b), a verified consolidated statement of income of the bank and such subsidiaries for the fiscal year immediately preceding the date of the balance sheet.

C. *Unconsolidated subsidiaries and other persons.* 6. *Separate statements of unconsolidated subsidiaries and other persons.* There shall be filed such other verified financial statements with respect to unconsolidated subsidiaries and other persons as are material to a proper understanding of the financial position and results of operations of the total enterprise. For purposes of this item, "other persons" includes 50 percent owned persons and unconsolidated persons in which the bank takes up equity in undistributed earnings.

D. *Special provisions.* 7. *Succession to other businesses.* (a) If during the period for which its statements of income are required, the bank has by merger, consolidation, or otherwise succeeded to one or more businesses, the additions, eliminations, and other changes effected in the succession shall be appropriately set forth in a note or supporting schedule to the balance sheets filed. In addition, statements of income for each constituent business, or combined statements, if appropriate, shall be filed for such period prior to the succession as may be necessary when added to the time, if any, for which statements of income after the succession are filed to cover the equivalent of the period specified in Instructions 2 and 5 above.

(b) If the bank by merger, consolidation, or otherwise is about to succeed to one or more businesses, there shall be filed for the constituent businesses financial statements, combined if appropriate, that would be required if they were registering securities under the Act. In addition, there shall be filed a balance sheet of the bank giving effect to the plan of succession. These balance sheets shall be set forth in such form, preferably columnar, as will show in related manner the balance sheets of the constituent businesses the changes to be effected in the succession and the balance sheet of the bank after giving effect to the plan of succession. By a footnote or otherwise, a brief explanation of the changes shall be given.

(c) This instruction shall not apply with respect to the bank's succession to the business of any majority-owned subsidiary or to any acquisition of a business by purchase.

8. *Acquisition of other businesses.* (a) There shall be filed for any business directly or indirectly acquired by the bank after the date of the balance sheet filed pursuant to Part A or B above and for any business to be directly or indirectly acquired by the bank, the financial statements that would be required if such business were a registrant.

(b) The acquisition of securities shall be deemed to be the acquisition of a business if such securities give control of the business or combined with securities already held give such control. In addition, the acquisition of securities that will extend the bank's control of a business shall be deemed the acquisition of the business if any of the securities being registered hereunder are to be offered in exchange for the securities to be acquired.

(c) No financial statements need be filed, however, for any business acquired or to be acquired from a majority-owned subsidiary. In addition, the statements of any one or more businesses may be omitted if such businesses, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.

9. *Filing of other statements in certain cases.* The Board may, upon the request of the bank, and where consistent with the protection of investors, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Board may also require the filing of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

E. *Historical Financial Information.* 10. *Scope of Part E.* The information required by Part E shall be furnished for the seven-year period preceding the period for which statements of income are filed, as to the accounts of each person whose balance sheet is filed. The information is to be given as to all of the accounts specified whether they are presently carried on the books or not. Part E does not call for verification, but only for a survey or review of the accounts specified. It should not be detailed beyond a point material to an investor.

11. *Revaluation of assets.* (a) If there were any material increases or decreases result-

ing from revaluing of assets, state (1) in what year or years such revaluations were made; (2) the amounts of such increases or decreases, and the accounts affected, including all related entries; and (3) if in connection with such revaluations any related adjustments were made in reserve accounts, the accounts and amounts with explanations.

(b) Information is not required as to adjustments made in the ordinary course of business, but only as to major revaluations made for the purpose of entering on the books current values, reproduction cost, or any values other than original cost.

(c) No information need be furnished with respect to any revaluation entry that was subsequently reversed or with respect to the reversal of a revaluation entry recorded prior to the period if a statement as to the reversal is made.

12. *Capital shares.* (a) If there were any material restatements of capital shares that resulted in transfers from capital share liability to surplus, undivided profits, or reserves, state the amount of each such restatement and all related entries. No statement need be made as to restatements resulting from the declaration of share dividends.

(b) If there was an original issue of capital shares, any part of the proceeds of which was credited to accounts other than capital stock accounts, state the title of the class, the accounts, and the respective amounts credited thereto.

13. *Debt discount and expense written off.* If any material amount of debt discount and expense, on long-term debt still outstanding, was written off earlier than as required under any periodic amortization plan, give the following information: (1) Title of the securities; (2) date of the write-off; (3) amount written off; and (4) to what account charged.

14. *Premiums and discount and expense on securities retired.* If any material amount of long-term debt or preferred shares was retired, and if either the retirement was made at a premium or there remained, at the time of retirement, a material amount of unamortized discount and expense applicable to the securities retired, state for each class (1) title of the securities retired; (2) date of retirement; (3) amount of premium paid and of unamortized discount and expense; (4) to what account charged; and (5) whether being amortized and, if so, the plan of amortization.

15. *Other changes in surplus or undivided profits.* If there were any material increases or decreases in surplus or undivided profits, other than those resulting from transactions specified above, the closing of the income account, or the declaration or payment of dividends, state (1) the year or years in which such increases or decreases were made; (2) the nature and amounts thereof; and (3) the accounts affected, including all material related entries. Instruction 11(c) above also applies here.

16. *Predecessors.* The information shall be furnished, to the extent material, as to any predecessor of the bank from the beginning of the period to the date of succession, not only as to the entries made respectively in the books of the predecessor or the successor, but also as to the changes effected in the transfer of the assets from the predecessor. No information need be furnished, however, as to any one or more predecessors that, considered in the aggregate, would not constitute a significant predecessor.

17. *Omission of certain information.* (a) No information need be furnished as to any subsidiary, whether consolidated or unconsolidated, for the period prior to the date on which the subsidiary became a majority-owned subsidiary of the bank or of a predecessor for which information is required above.

(b) No information need be furnished hereunder as to any one or more unconsolidated subsidiaries for which separate financial statements are filed if all subsidiaries for which the information is so omitted, considered in the aggregate, would not constitute a significant subsidiary.

(c) Only the information specified in Instruction 11 need be given as to any predecessor or any subsidiary thereof if immediately prior to the date of succession thereto by a person for which information is required, the predecessor or subsidiary was in insolvency proceedings.

INSTRUCTIONS AS TO EXHIBITS

Subject to provisions regarding incorporation by reference, the following exhibits shall be filed as a part of the Registration Statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits in Item 20.

1. Copies of the charter (or a composite or restatement thereof) and the by-laws (or instruments corresponding thereto) as presently in effect.

2. Copies of any plan of acquisition, reorganization, readjustment, or succession described in answer to Item 3 or 17.

3. (a) Specimens or copies of all securities being registered hereunder, and copies of all constituent instruments defining the rights of holders of long-term debt of the bank and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) There need not be filed, however, (1) any instrument with respect to long-term debt not being registered hereunder if the total amount of securities authorized thereunder does not exceed 25 per cent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such instrument to the Board upon request, (2) any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the bank of the securities being registered, or (3) copies of instruments evidencing scrip certificates for fractions of shares.

4. Copies of all pension, retirement, or other deferred compensation plans, contracts, or arrangements. If any such plan, contract, or arrangement is not set forth in a formal document, furnish a reasonably detailed description thereof. Copies of any booklet or other description of any such plan, contract, or arrangement shall also be filed.

5. Copies of any plan setting forth the terms and conditions upon which outstanding options, warrants, or rights to purchase securities of the bank or its subsidiaries from the bank or its affiliates have been issued, together with specimen copies of such options, warrants, or rights; or, if they were not issued pursuant to such a plan, copies of each such option, warrant, or right.

6. Copies of any voting trust agreement referred to in answer to Item 12.

7. (a) Copies of every material contract not made in the ordinary course of business that is to be performed in whole or in part at or after the filing of the Registration Statement or that was made not more than two years before such filing and performance of which has not been completed. Only contracts need be filed as to which the bank or a subsidiary is a party or has succeeded to a party by assumption or assignment, and in which the bank or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the bank and its subsidiaries, it is made in the ordinary course of business and need not be filed, unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(1) Directors, officers, promoters, voting trustee, or security holders named in answer to Item 11(a) are parties thereto except where the contract merely involves purchase or sale of current assets having a determinable market price, at such price.

(2) It calls for the acquisition or sale of fixed assets for a consideration exceeding 10 per cent of the value of all fixed assets of the bank and its subsidiaries.

(3) It is a lease under which a significant part of the property described under Item 5 is held by the bank, or

(4) The amount of the contract, or its importance to the business of the bank and its subsidiaries, is material, and the terms and conditions are of a nature of which investors reasonably should be informed.

(c) Any bonus or profit-sharing plan, contract, or arrangement shall be deemed material and shall be filed.

[40 FR 50458, Oct. 30, 1975, as amended at 44 FR 67964, Nov. 28, 1979; 46 FR 11249, Feb. 6, 1981]

§ 206.42 Form for annual report of bank (Form F-2).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FORM F-2

ANNUAL REPORT PURSUANT TO SECTION 13 OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended. ——————

Exact name of registrant as specified in its charter——————

————————————————

State or other jurisdiction of incorporation or organization ——————

————————————————

I.R.S. Employer Identification No. ——————

(Address of principal) ——————

Zip Code——————

Bank's telephone number, including area code ——————

————————————————

Securities registered pursuant to section 12(b) of the Act:

Title of each class

————————————————

————————————————

Name of each exchange on which registered

————————————————

————————————————

Securities registered pursuant to section 12 (g) of the Act:

————————————————

(Title of class)

————————————————

(Title of class)

GENERAL INSTRUCTIONS

A. *Rule as to Use of Form F-2.* (a) Form F-2 shall be used for annual reports pursuant to section 13 of the Securities Exchange Act of 1934.

(b) Reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report, or within 30 days of the mailing of the bank's annual report to stockholders, which ever occurs first.

B. *Application of Regulation F.* (a) The Board's Regulation F contains certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

(b) Particular attention is directed to § 206.4 which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in § 206.2 should be especially noted.

C. *Preparation of Report.* (a) This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of § 206.4(t). The report shall contain the item numbers and captions of all items but the text of such items may be omitted. The answers to the items shall be prepared in the manner specified in § 206.4(u).

(b) Except where information is required to be given for the fiscal year or as of a specified date, it shall be given as of the latest practicable date.

(c) Attention is directed to § 206.4(j) which states: "In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading."

D. *Signature and Filing of Report.* Four complete copies of the report, including financial statements, exhibits and all other papers and documents filed as a part thereof, and four additional copies which need not include exhibits, shall be filed with the Board. At least one complete copy of the report, including financial statements, exhibits and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the bank is registered. At least one complete copy of the report filed with the Board and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

E. *Disclosure with Respect to Foreign Subsidiaries.* Information required by any item or other requirement of this form with respect to any foreign subsidiary may be omitted to the extent that the required disclosure would be detrimental to the bank. However, financial statements, otherwise required, shall not be omitted pursuant to this instruction. Where information is omitted pursuant to this instruction, a statement shall be made that such information has been omitted and the names of the subsidiaries involved shall be separately furnished to the Board. The Board may, in its discretion, call for justification that the required disclosure would be detrimental.

F. *Incorporation of Certain Information by Reference.* Attention is directed to § 206.4(m) which provides for the incorporation by reference of information contained in certain documents in answer or partial answer to any item of a report.

G. *Omission of Information Previously Filed.* (a) Except as provided in paragraph (b) below, the information called for by Items 1, 2, 3, 4, 8, 9, 10, 11, 12, 15, 16, 17, and 18 of this form is to be furnished by all registrants required to file a report, on this form. Items 5, 6, 7, 13, and 14 may be omitted from the report by any registrant which, since the close of the fiscal year, has filed with the Board a definite proxy statement or a definitive information statement pursuant to § 206.5 or Regulation F which involved the election of directors, or which files such a proxy or information statement not later than 120 days after the close of the fiscal year.

(b) If the information called for by Items 2, 9, or 12 would be unchanged from that given in a previous report, a reference to the previous report which includes the required information will be sufficient. Copies of such previous report need not be filed with the report currently being filed on this form.

Item 1. Approximate Number of Equity Security Holders.

State in the tabular form indicated below the approximate number of holders of record of each class of equity securities of the bank as of the end of the fiscal year:

(1) Title of class	(2) Number of recorded holders

Instructions. 1. Attention is directed to the definition of the term "equity security" in section 3(a)(11) of the Act and the definition of the term "held of record" in § 206.2(j).

2. The information shall be given as of the end of the last fiscal year or as of any subsequent date, except that if the latest determination of the number of record holders of any class of equity securities was made for some other purpose within 90 days prior to the end of the last fiscal year, the information may be given as of the date of such determination.

3. Information need not be given with respect to the number of holders of outstanding nontransferable options to purchase securities of the bank.

Item 2. Parents and subsidiaries of the bank. Furnish a list or diagram showing the relationship of the bank to all parents and subsidiaries, and as to each person named indicate the percentage of voting securities owned, or other basis of control, by its immediate parent. See General Instruction G.

Instructions. 1. This item need not be answered if there has been no change in the list or diagram as last previously reported.

2. The list or diagram shall include the bank and shall be so prepared as to show clearly the relationship of each person named to the bank and to the other persons named. If any person is controlled by means of the direct ownership of its securities by two or more persons, so indicate by appropriate cross reference.

3. Designate by appropriate symbols (a) subsidiaries for which separate financial statements are filed; (b) subsidiaries included in the respective consolidated financial statements, (c) subsidiaries included in group financial statements filed for unconsolidated subsidiaries, and (d) other subsidiaries, indicating briefly why statements of such subsidiaries are not filed.

4. Indicate the name of the state or other jurisdiction in which each subsidiary was organized or incorporated.

5. The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.

6. A person, approximately 50 per cent of whose voting securities are owned, directly or indirectly, by the bank, and approximately 50 per cent of whose voting securities are owned directly or indirectly, by another person, or if the bank takes up the equity in undistributed earnings of any other unconsolidated person shall be considered a subsidiary for the purpose of this item.

Item 3. Business.

Describe the business done or intended to be done by the bank and its subsidiaries, including any material changes during the fiscal year. In describing the business done by the bank, the business of its subsidiaries should be included only insofar as the same is important to an understanding of the character and development of the business conducted by the total enterprise. The description shall also include, without limitation, information as to matters such as the following:

(a) Competitive conditions and the competitive position of the bank in its service area;

(b) By appropriate categories the amount of loan and similar commitments (including check credit, over-draft, and credit card lines) as of the end of each of the last two fiscal years, and with respect to the amount as of the end of the most recent fiscal year, the portion considered to be "firm" and the portion not reasonably expected to be exercised within the current year.

Instructions. 1. The categorization may include such items as commercial letters of credit, commitments to grant loans, and commitments to purchase loans, or such other classifications deemed appropriate by the bank. Any specific category representing more than 25 percent of the total commitments shown shall, however, be identified and specific categories representing individually less than 25 percent of the total commitments shown may be aggregated as Other Commitments.

2. If more than 25 percent of the total commitments shown are on terms whereby the prices or interest rates are not to be determined by the market conditions to be prevailing at the time of exercise of the commitments, the amount and a description of such commitments should also be disclosed.

(c) If a material portion of the bank's deposits has been obtained from a single person or a few persons (including Federal, State, and local governments and agencies thereunder), the loss of any of one or more of whom would have a materially adverse effect on the business of the bank, or if a material portion of the bank's loans is concentrated within a single industry or group of related industries, a description of such customers, their other relationships, if any, to the bank, and material facts regarding their importance to the business of the bank;

(d) The extent to which the business is or may be seasonal;

(e) Appropriate disclosure shall be made with respect to the importance of and risks attendant to foreign sources and applications of funds;

(f) Appropriate disclosure shall also be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the bank and its subsidiaries; and

(g) The approximate number of persons employed.

Item 4. Summary of operations. Furnish in comparative columnar form a summary of operations for the bank or for the bank and its subsidiaries consolidated, as appropriate, for—

(a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the summary from being misleading.

Where necessary, include information or explanation of material significance to investors in appraising the results shown, or refer to such information or explanation set forth elsewhere in the registration statement.

Instruction. 1. As a minimum, operating income, operating expenses, income before income taxes and security gains (losses), applicable income taxes, income before security gains (losses), security gains (losses), and net income should be presented. The summary shall reflect retroactive adjustments of any material items affecting the comparability of the results.

2. Per share earnings and per share dividends declared for each period of the summary shall be also shown. The basis of the computation of per share earnings shall be stated, together with the number of shares used in the computation. The bank shall file as an exhibit a statement setting forth in reasonable detail the computation of per share earnings, unless the computation can be clearly determined from the answer to this item.

3. (a) If debt securities are being registered, the bank may, at its option, show in tabular form for each fiscal year the ratio of earnings to fixed charges. Such ratio shall be calculated both on the basis of excluding interest on deposits and including interest on deposits as part of "fixed charges."

(b) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income or unconsolidated subsidiaries and 50 per cent or less owned persons.

(c) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; and (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case.

(d) Any bank electing to show the ratio of earnings to fixed charges, in accordance with this instruction, shall file as an exhibit a statement setting forth in reasonable detail the computations of the ratios shown.

4. For any previously reported material charge or credit to income of an unusual or infrequent nature in which an amount of cost was estimated to be incurred in the fiscal year being reported on or the prior fiscal year, summarize such transaction and state the amounts of such estimated cost and the amounts of the actual cost incurred in such periods, the reasons for differences between estimated and actual amounts, if any, and provide a detailed reconciliation showing all changes and credits to any reserve provided.

Item 5. Principal Holders of Voting Securities and Security Holdings of Management. See General Instruction G. Set forth the same information as to principal holders of voting securities and security holdings of management as is required to be furnished by Item 5 of Form F-5.

Item 6. Directors of Bank. See General Instruction G. Set forth the same information as is required by Item 6(a), (d), and (e) of Form F-5 at § 206.51. *Note:* This information need not be included for nominees for election as directors.

Item 7. Remuneration of Director and Officers and Related Matters See General Instruction G. Set forth the same information as to remuneration of officers and directors and their transactions with management and others as is required to be furnished by Item 7(a) and (b) of Form F-5 at § 206.51.

Item 8. Bank Premises and Other Real Estate. Describe material changes in the location and general character of premises and real property of the bank and its subsidiaries, whether held in fee or leased, and if leased, the expiration dates of material leases.

Item 9. Legal Proceeding. (a) Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

(b) If any material legal proceeding which was previously reported or which became reportable during the fourth quarter of bank's fiscal year was terminated during such quarter, give the date of termination and describe the disposition thereof with respect to the bank and its subsidiaries.

Instructions. 1. No collection, action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the equity

capital of the bank. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the bank or any of its significant subsidiaries shall be described. Any material proceedings to which any director, officer or affiliate of the registratnt, any security holder named in answer to Item 5(a), or any associate of any such director, officer or security holder, is a party, or has a material interest, adverse to the bank or any of its subsidiaries shall also be described.

4. Notwithstanding the foregoing, administrative or judicial proceeding arising under any Federal, State or local provisions regulating the discharge of materials into the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the bank or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the equity assets of the bank and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of equity capital and whether or not such proceedings are considered "ordinary routine litigation incidental to the business", provided, however, that such proceedings which are similar in nature may be grouped and described generally stating; the number of such proceedings in each group; a generic description of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the bank the effect of such proceedings on the business or financial condition of the bank.

Item 10. Increases and Decreases in Outstanding Securities. (a) Give the following information as to all increases and decreases during the fiscal year in the amount of equity securities of the registrant outstanding:

(1) The title of the class of securities involved;

(2) The date of the transaction;

(3) The amount of securities involved and whether an increase or decrease; and

(4) A brief description of the transaction in which the increase or decrease occurred. If previously reported, the description may be incorporated by a specific reference to the previous filing.

Instructions. The information shall be prepared in the form of a reconciliation between the amounts shown to be outstanding on the balance sheet to be filed with this report and the amounts shown on the bank's balance sheet for the previous year. The exercise of outstanding options or warrants (separately by class or type of option or warrant), conversions or previously issued convertible securities (separately by class of security) and the issuance of options may be grouped together showing the dates between which all such transactions occurred. If the information called for has been previously reported on Form F-4, it may be incorporated by a specific reference to the previous filing.

(b) Increases and decreases in the amount outstanding of debt securities which were previously reported in reports on Form F-4 should be listed and briefly discussed with appropriate cross references to the earlier disclosure.

(c) If, during the fourth quarter of the bank's fiscal year, the amount of debt securities outstanding has been increased or decreased through one or more transactions, and the aggregate amount of all such increases or decreases not previously reported exceeds 5 percent of the outstanding securities of the affected class, furnish, the following information:

(1) Title of class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date);

(2) A brief description of the transaction or transactions resulting in the change;

(3) If an increase in securities is reported, furnish: (i) A statement of the aggregate net each proceeds or the nature and aggregate amount of any consideration received or to be received by the bank; (ii) the names of the principal underweiters, if any; and (iii) a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds have been or are to be used and the approximate amount used or to be used for each such purpose: and

(4) If a decrease in securities is reported, a statement of the aggregate amount of cash or the nature and aggregate amount of any other consideration paid or to be paid by the bank in connection with such transaction or transactions.

Instructions. 1. This paragraph does not apply to notes, drafts, bills of exchange bankers' acceptances, or other obligations which mature not later than 1 year from the date of issuance. No report need be made where the amount not previously reported, although in excess of 5 percent of the amount outstanding, does not exceed 1,000 shares or other units.

2. This paragraph includes the reissuance of treasury securities and securities held for the account of the issuer thereof.

3. This paragraph need not be answered as to decreases resulting from ordinary sinking fund operations, similar periodic decreases made pursuant to the terms of the constituent instruments, or decreases resulting from the conversion of securities.

Item 11. Officers of Bank. See General Instruction G. Set forth the same information as to officers of bank as is required to be furnished by Item 6(a)-(e) of Form F-5 at § 206.51. When an officer has been employed by the bank or a subsidiary of the bank for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions in order to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

Item 12. Indemnification of directors and officers. See General Instruction G. State the general effect of any charter provision, bylaw, contract, arrangement or statute under which any director or officer of the bank is insured or indemnified in any manner against any liability which he may incur in his capacity as such.

Item 13. Options Granted to Management To Purchase Securities. See General Instruction G. Set forth the same information as to options granted to management to purchase securities as is required to be furnished by Item 7(c) of Form F-5 at § 206.51.

Item 14. Interest of Management and Others in Certain Transactions. See General Instruction G. Set forth the same information as to the interest of management and others in certain transactions as is required to be furnished by Item 7 (d), (e), and (f) of Form F-5 at § 206.51.

Item 15. Financial Statements and Exhibits, Filed, and Reports on Form F-3. (a) List all of the following documents filed as a part of the report:

1. All financial statements.

2. All exhibits, including those incorporated by reference.

Instructions. Where any financial statement or exhibits is incorporated by reference, the incorporation by reference shall be set forth in the list required by this item. Section 206.4(m) of Regulation F (12 CFR 206.4(m)).

(b) Reports on Form F-3. State whether any reports on Form F-3 have been filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of any such reports.

Item 16. Changes in securities and Changes in Security For Registered Securities. General Instruction. No response to this item is required if the information called for herein has been previously reported in a report on Form F-4.

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon teh rights of the holders of the registered securities.

Instruction. Restrictions upon payment of dividends are to be reported hereunder.

(c) If there has been a material withdrawal or substitution of assets securing any class of registered securities of the bank, furnish the following information:

1. Give the title of the securities.

2. Identify and describe breifly the assets involved in the withdrawal or substitutions.

3. Indicate the provision in the underlying indenture, if any, authorizing the withdrawal or substitution.

Instruction. This paragraph need not be answered where the withdrawal or substitution is made pursuant to the terms of an indenture which has been qualified under the Trust Indenture Act of 1939.

Item 17. Defaults Upon Senior Securities. General Instruction. No reposnse to this item is required if the information called for herein has been previously reported in a report on Form F-4.

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the bank or any of its significant subsidiaries exceeding 5 percent of the equity capital of the bank, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund instillment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction. This paragraph refers only to events which have become defaults under the governing instrucments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of divideneds has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the bank which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the bank, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction. Item 17 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account, of, the bank or its totally held subsidiaries.

Item 18. Submission of Matters to a Vote of Security Holders. If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information if not previously disclosed in a report on Form F-4.

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) Briefly describe each other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to each such matter.

Instructions. 1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraphs (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to § 206.5 of Regulation F, (ii) there was no solicitation in oppposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Board was reelected in its entirely, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the Bank has published a report containing all of the information called for by the item, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the bank has duly caused this annual report to be signed on its behalf by the undersigned, thereunto duly authorized.

____

(Name of bank)

Date ________________________

By ________________________

(Name and title of signing officer)

INSTRUCTIONS AS TO FINANCIAL STATEMENTS

These instructions specify the balance sheets and statements of income required to be filed as a part of annual reports on this form. Section 206.7 of this part governs the verification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts, statement of changes in financial position, and the schedules to be filed in support thereof.

1. Financial statements of the bank. (a) There shall be filed for the bank, in comparative columnar form, verified balance sheets as of the close of the last two fiscal years and verified statements of income for such fiscal years.

(b) Notwithstanding paragraph (a), the individual financial statements of the bank may be omitted if consolidated statements of the bank and one or more of its subsidiaries are filed.

2. Consolidated statements. There shall be filed for the bank and its majority-owned (i) bank premises subsidiaries, (ii) subsidiaries operating under the provisions of section 25 or 25(a) of the Federal Reserve Act ("Agreement Corporations" and "Edge Act Corporations"), and (iii) significant subsidiaries, in comparative columnar form, verified consolidated balance sheets as of the close of the last two fiscal years of the bank and verified consolidated statements of income for such fiscal years.

3. Separate statements of unconsolidated subsidiaries and other persons. There shall be filed such other verified financial statements with respect to unconsolidated subsidiaries and other persons as are material to a proper understanding of the financial position and results of operations of the total enterprise. For purposes of this item, "other persons" includes 50 percent owned persons and unconsolidated persons in which the bank takes up equity in undistributed earnings.

4. Filing of other statements in certain cases. The Board may, upon the request of

the bank and where consistent with the protection of investors, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Board may also require the filing of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

INSTRUCTION AS TO EXHIBITS

Subject to provisions regarding the incorporation of exhibits by reference, the following exhibits shall be filed as a part of the report:

A. Copies of all amendments or modifications, not previously filed, to all exhibits previously filed (or copies of such exhibits as amended or modified).

B. Copies of all contracts and other documents of a character required to be filed as an exhibit to an original registration statement on Form F-1 which were executed or in effect during the fiscal year and not previously filed.

C. Copies of the exhibits called for by Instruction 3(d) to Item 4.

D. Copies of all constituent instrucments defining the rights of the holders of any new class of securities referred to in answer to Item 10(c).

E. Copies of the amendments to all constituent instrucments and other documents described in answer to Item 16.

F. Copies of the text of any proposal described and copies of any published report furnished in response to Item 18.

[40 FR 50458, Oct. 30, 1975, as amended at 43 FR 60554, Dec. 28, 1978; 44 FR 67965, Nov. 28, 1979; 46 FR 11249, Feb. 6, 1981]

§ 206.43 Form for current report of a bank (Form F-3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FORM F-3

Current Report

Pursuant to section 13 of the Securities Exchange Act of 1934. For the month of ——, 19—

(Exact name of bank as specified in charter)

(Address of principal office) ————

GENERAL INSTRUCTIONS

A. *Rule as to Use of Form F-3.*—Form F-3 shall be used for current reports under section 13 of the Securities Exchange Act of 1934, filed pursuant to § 206.4(h) of Regulation F (12 CFR 206.4(h)).

B. *Events to be Reported and Filing of Reports.*—A report on this form is required to be filed upon the occurrence of any one or more of the events specified in the items of this form. Reports are to be filed within 15 days after the occurrence of the earliest event required to be reported. However, reports which disclose events pursuant to Item 5 may be filed within 10 days after the close of the month during which the event occurred. If the letter from the independent accountants to be furnished pursuant to Item 4(d) is unavailable at the time of filing. It shall be filed within thirty days thereafter. Moreover, if substantially the same information as that required by this form has been previously reported by the bank, an additional report of the information on this form need not be made. The term "previously reported" is defined in § 206.2(v) of Regulation F (12 CFR 206.2(v)).

C. *Application of Regulation F.*—(a) Regulation F (12 CFR Part 206) contains certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

(b) Particular attention is directed to § 206.4 of Regulation F (12 CFR 206.4) which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the Report. The definitions contained in § 206.2 should be especially noted.

D. *Preparation of Report.* This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of § 206.4(t) of Regulation F (12 CFR 206.4(t)). The report shall contain the numbers and captions of all applicable items, but the text of such items may be omitted, provided the answers thereto are prepared in the manner specified in § 206.4(u) of Regulation F (12 CFR 206.4(u)). All items which are not required to be answered in the particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

E. *Signature and filing of report.*—Three complete copies of the report, including any financial statements, exhibits of other papers or documents filed as a part thereof, and five additional copies which need not include exhibits, shall be filed with the

Board. At least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the bank is registered. At least one complete copy of the report filed with the Board and one such copy filed with an exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

INFORMATION TO BE INCLUDED IN THE REPORT

Item 1. Changes in Control of Bank. (a) If, to the knowledge of management, a change in control of the Bank has occurred, state the name of the person(s) who acquired such control; the amount and the source of the consideration used by such person(s); the basis of the control; the date and a description of the transaction(s) which resulted in the change in control; the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that disclosure of the identity of the bank has been so omitted and filed separately with the Board.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to the election of directors or other matters shall be described.

(b) Describe any contractual arrangements, including any pledge of securities of the Bank, or any of its parents, known to management, the operation of the terms of which may at a subsequent date result in a change in control of the bank.

Instruction. Paragraph (b) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

(c) If the source of all or any part of the funds used to acquire control of the bank is a loan made by a bank as defined in section 3(a)(6) of the Act, indicate whether there exists any agreement, arrangement, or understanding pursuant to which the registrant bank maintains or would maintain a correspondent deposit account at such lending bank.

Item 2. Acquisition or Disposition of Assets. If the bank or any of its majority-owned subsidiaries has acquired or disposed of a significant amount of assets, otherwise than in the ordinary course of business, furnish the following information:

(a) The date and manner of the acquisition or disposition and a brief description of the assets involved, the nature and amount of consideration given or received therefor, the principle followed in determining the amount of such consideration, the identity of the person(s) from whom the assets were acquired or to whom they were sold and the nature of any material relationship between such person(s) and the registrant or any of its affiliates, any director or officer of the registrant, or any associate of any such director or officer.

(b) If any assets so acquired by the registrant or its subsidiaries constituted plant, equipment or other physical property, state the nature of the business in which the assets were used by the person(s) from whom acquired and whether the bank intends to continue such use or intends to devote the assets to other purposes, indicating such other purposes.

Instructions. 1. No information need be given as to (i) any transaction between any person and any wholly-owned subsidiary of such person; (ii) any transaction between two or more wholly-owned subsidiaries of any person; or (iii) the redemption or other acquisition of securities from the public, or the sale or other disposition of securities to the public, by the issuer of such securities.

2. The term "acquisition" includes every purchase, acquisition by lease, exchange, merger, consolidation, succession or other acquisition; *Provided,* That such term does not include the construction or development of property by or for the bank or its subsidiaries or the acquisition of materials for such purpose. The term "disposition" includes every sale, disposition by lease, exchange, merger, consolidation, mortgage, or hypothecation of assets, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

3. The information called for by this item is to be given as to each transaction or series of related transactions of the size indicated. The acquisition or disposition of securities shall be deemed the indirect acquisition or disposition of the assets represented by such securities if it results in the acquisition or disposition of control for such assets.

4. An acquisition or disposition shall be deemed to involve a significant amount of assets (i) if the bank's and its other subsidiaries' equity in the net book value of such assets or the amount paid or received therefor upon such acquisition or disposition ex-

ceeded 10 percent of the total equity capital of the bank and its consolidated subsidiaries, (ii) if it involved the succession to or disposition of a business which would meet the test of a significant subsidiary, or (iii) if it involved the acquisition or disposition of an interest in a business which would meet the test of a significant subsidiary and would be required to be accounted for by the equity method.

5. Where assets are acquired or disposed of through the acquisition or disposition of control of a person, the person from whom such control was acquired or to whom it was disposed of shall be deemed the person from whom the assets were acquired or to whom they were disposed of, for the purposes of this item. Where such control was acquired from or disposed of to not more than five persons, their names shall be given; otherwise it will suffice to identify in an appropriate manner the class of such persons.

6. Attention is directed to the requirements in Item 6 of the form with respect to the filing of financial statements for businesses acquired and to the filing of copies of the plans of acquisition or disposition as exhibits to the report.

Item 3. Bankruptcy or Receivership. If a receiver, fiscal agent or similar officer has been appointed for a bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the Bank or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or govenmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agent or similar officer and the date of his appointment.

Item 4. Changes in Bank's Accountant. If an independent accountant who was previously engaged as the principal accontant to audit the bank's financial statements resigns (or indicates he declines to stand for re-election after the completion of the current audit) or is dismissed as the bank's principal accountant, or another independent accountant is engaged as principal accountant, or if an independent accountant on whom the principal accountant expressed reliance in his report regarding a significant subsidiary resigns (or formally indicates he declines to stand for re-election after the completion of the current audit) or is dismissed or another independent accountant is engaged to audit that subsidiary:

(a) State the date of such resignation (or declination to stand for re-election), dismissal or engagement.

(b) State whether in connection with the audits of the two most recent fiscal years and any subsequent interim period preceding such resignation, dismissal or engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused him to make reference in connection with his report to the subject matter of the disagreement(s); also, describe each such disagreement. The disagreements required to be reported in response to the preceding sentence include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this rule are those which occur at the decisionmaking level; i.e., between personnel of the bank responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(c) State whether the principal accountant's report on the financial statements for any of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainty, audit scope, or accounting principles; also describe the nature of each such adverse opinion, disclaimer of opinion or qualification.

(d) The bank shall request the former accountant to furnish the bank with a letter addressed to the Board stating whether he agrees with the statements made by the bank in response to this item and, if not, stating the respects in which he does not agree. The bank shall file a copy of the former accountant's letter as an exhibit with all copies of the Form F-3 required to be filed pursuant to General Instruction F.

(e) State whether the decision to change accountants was recommended or approved by:

(1) Any audit or similar committee of the Board of Directors, if the bank has such a committee; or

(2) The Board of Directors, if the bank has no such committee.

Item 5. Resignations of Bank's Directors. (a) If a director has resigned or declined to stand for re-election to the Board of Directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices, and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of such resignation or declination to stand for re-election and summarize the director's description of the disagreement.

(b) If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

(c) The bank shall file a copy of the director's letter as an exhibit with all copies of this Form F-3.

Item 6. Other Materially Important Events. The bank may, at its option, report under this item any events, with respect to which information is not otherwise called for by this form, which the bank deems of material importance to security holders.

Item 7. Financial Statements and Exhibits. List below the financial statements and exhibits, if any, filed as a part of this report.

(a) Financial statements of business acquired.

Instructions. 1. Businesses for Which Statements Are Required.

The financial statements specified below shall be filed for any business the succession to which or the acquisition of an interest in which is required to be described in answer to Item 2 above.

2. Statements Required.

(a) There shall be filed a balance sheet of the business as of a date reasonably close to the date of acquisition. This balance sheet shall be verified if practical.

(b) Income and source and application of funds statements of the business shall be filed for each of the last three full fiscal years and for the period, if any, between the close of the latest of such fiscal years and the date of the latest balance sheet filed. These income and source and application of funds statements shall be verified up to the date of the verified balance sheet, if practical.

(c) If the business was in insolvency proceedings immediately prior to its acquisition, the balance sheets required above need not be verified. In such case, the income and source and application of funds statements required shall be verified to the close of the latest full fiscal year, if practical.

(d) Except as otherwise provided in this instruction, the principles applicable to a registrant and its subsidiaries with respect to the filing of individual, consolidated and group statements in an original application or annual report shall be applicable to the statements required by this instruction.

3. Application of § 206.7.

Section 206.7 governs the examination and the form and content of the statements required by the preceding instruction, including the basis of consolidation, and prescribes the statements of other stockholders' equity to be filed. No supporting schedules need be filed. A manually signed accountant's report should be provided.

4. Filing of Other Financial Information in Certain Cases.

The Board, upon the written request of the bank and where consistent with the protection of investors, may permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character, if the required financial statements are not reasonably available to the bank, because the obtaining thereof would involve unreasonable effort, expense or practicable difficulties. A request for such relief shall be filed as a part of the report. If an extension of time has been granted pursuant to § 206.4(r) of Regulation F (12 CFR 206.4(r)), a request for relief shall be filed as a part of an amendment to the initial report within the additional time provided under said rule. The request shall set forth the following information:

(a) The reason(s) for the unavailability of the audited financial statements;

(b) The estimated costs of their preparation;

(c) An explanation of any other practical auditing problems, and

(d) A tabular presentation of the following items of information, comparing the acquired business(es) with the bank on a consolidated basis (excluding the acquired business(es)): (1) Operating income; (2) net income; (3) total assets; (4) total stockholder equity; and (5) total purchase price compared to total equity capital of bank.

The Board may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

(b) *Exhibits.* Subject to the rules as to incorporation by reference, the following documents shall be filed as exhibits to this report.

1. Copies of any plan of acquisition or disposition described in answer to Item 2, including any plan of reorganization, readjustment, exchange, merger, consolidation or succession in connection therewith.

2. Letters from directors furnished pursuant to Item 5.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date————

(Registrant)

(Signature)

(Typed name of signing officer)

(Title of signing officer)

[43 FR 60555, Dec. 28, 1978, as amended at 44 FR 67965, Nov. 28, 1979]

§ 206.44 Form for quarterly report of bank (Form F-4).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FORM F-4

QUARTERLY REPORT

(Name of bank)

(City and State)

PART A—SUMMARIZED STATEMENT OF INCOME

Item	3 months ending—		Fiscal year to date (— months ending ——)	
	19—	19—	19— (current year)	19— (prior year)
1. Operating income:				
(a) Interest and fees on loans				
(b) Interest on balances with banks				
(c) Interest and dividends on securities.				
U.S. Treasury securities				
Obligations of other U.S. Government agencies and corporations.				
Obligations of States and political subdivisions.				
Other securities				
(d) Other operating income				
(e) Total operating income				
2. Operating expenses:				
(a) Salaries and employee benefits				
(b) Interest expense				
(c) Provision for loan losses				
(d) Other operating expenses				
(e) Total operating expenses				
3. Income before income taxes and securities gains (losses).				
4. Applicable income taxes				
5. Income before securities gains (losses)				
6. Net securities gains (losses), less related tax effect.				
7. Net income:				
Earnings per common share:				
Income before securities gains (losses).				
Net income				
Cash dividends declared per common share.				

PART B—BALANCE SHEET

Furnish, insofar as practicable in the manner presented below, data as at the end of the latest fiscal quarter and for the end of the corresponding quarter for the preceding fiscal year.

	As of —— 19— (current year)	As of —— 19— (prior year)
Assets:		
1. Cash and due from banks		
2. Investment securities:		
(a) U.S. Treasury securities		
(b) Obligations of other U.S. Government agencies and corporations.		
(c) Obligations of States and political subdivisions.		
(d) Other securities		
3. Trading account securities		
4. Federal funds sold and securities purchased under agreements to resell.		
5. Loans:		
Less: reserve for possible loan losses		
Loans, net		
6. Direct lease financing		
7. Bank premise and equipment		
8. Real estate owned other than bank premises		
9. Investment in unconsolidated subsidiaries and associated companies.		
10. Customers' acceptance liability		
11. Other assets		
12. Total assets		
Liabilities and capital:		
13. Deposits:		
(a) Demand deposits in domestic offices		
(b) Savings deposits in domestic offices		
(c) Time deposits in domestic offices		
(d) Deposits in foreign offices		
14. Federal funds purchased and securities sold under agreements to repurchase.		
15. Other liabilities for borrowed money		
16. Bank's acceptance outstanding		
17. Mortgage indebtedness		
18. Other liabilities		
19. Total liabilities (excluding subordinated notes and debentures).		
20. Subordinated notes and debentures		
21. Equity capital:		
(a) Capital stock:		
Common stock		
Preferred stock		
(b) Surplus		
(c) Undivided profits		
(d) Reserve for contingencies and other capital reserves.		
22. Total equity capital		
23. Total liabilities and equity capital (items 19, 20 and 22).		

PART C—CHANGES IN FINANCIAL POSITION

	Fiscal year to date (— months ending ——)	
	19— (current year)	19— (prior year)
Sources of funds:		
Operations:		
Net income		
Charges to income not affecting funds		
Total funds provided by operations		
Equity funds—sale proceeds		
Subordinated notes and debentures—sale proceeds.		
Increase (decrease) in liabilities [1]		

PART C—CHANGES IN FINANCIAL POSITION—Continued

	Fiscal year to date (— months ending —)	
	19— (current year)	19— (prior year)
Total		
Applications of funds:		
Payment of dividends		
Purchase of property and equipment		
Increase (decrease) in assets [1]		
Total		

[1] Sources and applications of funds items shall be shown separately by amounts when they exceed 5 percent of the average of total funds provided during the respective reported periods.

PART D—OTHER INFORMATION

Instruction. Report shall contain the item numbers and captions of all applicable items of Part D, but the text of such items may be omitted: *Provided,* The responses clearly indicate the coverage of the item. Any item which is inapplicable or to which the answer is negative may be omitted and no reference thereto need be made in the report. If substantially the same information has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in § 206.2(v) of Regulation F.

Item 1. Legal Proceedings. (a) Briefly describe any material legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries has become a party or of which any of their property has become the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought.

(b) If any such proceeding previously reported has been terminated, identify the proceeding, give the date of termination and describe the disposition thereof with respect to the Bank and its subsidiaries.

Instructions 1. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the equity capital accounts of the bank. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

2. Notwithstanding the foregoing instructions, any bankruptcy, receivership or similar proceeding with respect to the bank or any of its significant subsidiaries shall be described. Any proceeding to which any director, officer or affiliate of the bank, any principal holder of equity securities of the bank or any associate of any such director, officer or security holder, is a party adverse to the bank or any of its subsidiaries shall also be described.

3. Notwithstanding the foregoing, administrative or judicial proceedings arising under any Federal, State or local provisions regulating the discharge of materials into the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the bank or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the equity capital of the bank and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of equity capital on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business": *Provided, however,* That such proceedings which are similar in nature may be grouped and described generally stating: The number of such proceedings in each group; a generic description of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the bank, the effect of such proceedings on the business or financial condition of the bank.

Item 2. Changes in Securities. (a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect to the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction. Limitations upon the payment of dividends are to be reported hereunder.

Item 3. Changes in Security for Registered Securities. If there has been a material withdrawal or substitution of assets securing any class of registered securities of the bank furnish the following information:

(a) Give the title of the securities.

(b) Identify and describe briefly the assets involved in the withdrawal or substitution.

(c) Indicate the provision in the underlying indenture, if any, authorizing the withdrawal or substitution.

Instruction. This item need not be answered where the withdrawal or substitution is made pursuant to the terms of an indenture which has been qualified under the Trust Indenture Act of 1939.

Item 4. Defaults Upon Senior Securities. (a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the bank or any of its significant subsidiaries exceeding 5 percent of the equity capital of the bank, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction. This paragraph refers only to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the bank which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the bank, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction. Item 4 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the bank or its totally held subsidiaries.

Item 5. Increase in Amount Outstanding of Securities. If the amount outstanding of securities of the bank has been increased through the issuance of any new class of securities or through the issuance or reissuance of any additional securities of a class outstanding, and the aggregate amount of all such increases not previously reported exceeds 5 percent of the outstanding securities of the class, furnish the following information:

(a) Title of class, the amount outstanding as last previously reported, and the amount presently outstanding (as of a specified date);

(b) A brief description of the transaction(s) resulting in the increase and a statement of the aggregate net cash proceeds or the nature and aggregate amount of any other consideration received or to be received by the bank;

(c) The names of the principal underwriters, if any;

(d) A reasonable itemized statement of the purposes so far as determinable, for which the net proceeds have been or are to be used and the approximate amount used or to be used for each such purpose;

(e) If the securities were capital shares, a statement of the amount of the proceeds credited or to be credited to any account other than the appropriate capital share account.

Instructions. 1. This item does not apply to notes, drafts, bills of exchange, bankers' acceptances or other obligations which mature not later than 1 year from the date of issuance. No report need be made where the amount not previously reported, although in excess of 5 percent of the amount outstanding, does not exceed 1,000 shares or other units.

2. This item includes the reissuance of Treasury securities and securities held for the account of the issuer thereof.

Item 6. Decrease in Amount Outstanding of Securities. If the amount outstanding of any class of securities of the bank has been decreased through one or more transactions and the aggregate amount of all such decreases not previously reported exceeds 5 percent of the amount of securities of the class previously outstanding, furnish the following information:

(a) Title of the class, the amount outstanding as last previously reported, and the amount currently outstanding (as of a specified date).

(b) A brief description of the transaction(s) involving the decrease and a statement of the aggregate amount of cash or the nature and aggregate amount of any other consideration paid or to be paid by the bank in connection with such transaction or transactions.

Instruction. Instruction 1 to Item 5 shall also apply to this item. This item need not be answered as to decreases resulting from ordinary sinking fund operations, similar periodic decreases made pursuant to the terms of the constituent instruments, or decreases resulting from the conversion of securities.

Item 7. Submission of Matters to a Vote of Security Holders. If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) Briefly describe each other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) Describe the terms of any settlement between the bank and any other participant (as defined in § 206.5(i)) terminating any solicitation subject to § 206.5(i) including the cost or anticipated cost to the bank.

Instructions. 1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraphs (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to § 206.5 of Regulation F under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the bank did not solicit proxies and the board of directors as previously reported to the Board was reelected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has published a report containing all of the information called for by this item, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

6. If the bank has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

Item 8. Other Materially Important Events. The registrant may, at its option, report under this item any events, not previously reported in a report on Form F-3, with respect to which information is not otherwise called for by this form but which the registrant deems of material importance to security holders.

Item 9. Exhibits and Reports on Form F-3 (12 CFR 206.43). (a) Exhibits. List below the documents, if any, filed as a part of this report. Subject to the rules as to incorporation by reference, the following documents shall be filed as exhibits:

1. Copies of the amendments to all constituent instruments and other documents described in answer to Item 2.

2. Copies of all constituent instruments defining the rights of the holders of any new class of securities referred to in answer to Item 5.

3. Copies of the text of any proposal described in answer to Item 7.

4. Copies of any published report furnished in response to Item 7. (See Item 7, Instruction 5.)

5. Copies of any material amendment to the bank's charter or by-laws not otherwise required to be filed.

(b) Reports on Form F-3. State whether any reports on Form F-3 have been filed during the quarter for which this report is filed, listing the items reported, any financial statements filed, and the dates of any such reports.

Pursuant to the requirements of the Securities Exchange Act of 1934, the bank has duly caused this quarterly report to be signed on its behalf by the undersigned, thereunto duly authorized.

____

(Name of bank)

Date__________

By ____________________________

(Name and title of signing officer)

GENERAL INSTRUCTIONS

(a) *Use of Form F-4.* (1) Form F-4 is a guide for use in preparation of quarterly reports to be filed with the Board. (2) The interim report shall be filed not later than 45 days after the end of each of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year.

(b) *Persons for whom the information is to be given.* The required information is to be given as to the registrant bank or, if the bank files consolidated financial statements with the annual reports filed with the Board, it shall cover the bank and its consolidated subsidiaries. If the information is given as to the bank and its consolidated subsidiaries, it need not be given separately for the bank.

(c) *Presentation of information.* The form calls only for the items of information specified. It is not necessary to furnish a formal financial statement presentation. The information is not required to be audited (see § 206.7(b) of this part). The report may carry a notation to that effect and any other qualification considered necessary or appropriate. Amounts may be stated in thousands of dollars if a notation to that effect is made.

(d) *Incorporation by reference to published statements.* If the bank makes available to its stockholders or otherwise issues or publishes, within the period prescribed for filing the report, a financial statement containing the information required by this form, such information may be incorporated by reference to such published statement if copies thereof are filed as an exhibit to this report.

(e) *Extraordinary items and cumulative effects of changes in accounting principles.* If present with respect to any interim period reported herein, extraordinary items and cumulative effect of a change in accounting principles less applicable income tax effect shall be appropriately segregated and included in the determination of net income. (See Form F-9B, Statement of Income.)

(f) *Acquisitions.* (1) If the bank has entered into a business combination with another bank or other related business treated for accounting purposes as a pooling of interests, the results of operations reported in this report—for both the current year and the preceding year—should reflect the combined results of the pooled entities. Disclosure of the separate results of the combined entities for periods prior to the combination should be given in a footnote with appropriate explanation.

(2) In case the bank has acquired a significant amount of assets in a transaction treated for accounting purposes as a purchase, during any of the periods covered by the report, the effect thereof on revenue and net income, in total and per share, should be disclosed in a footnote.

(g) *Management's analysis of quarterly income statements.* The bank shall provide a narrative analysis of the results of operations explaining the reasons for material changes in the amount of revenue and expense items between the most recent quarter and the quarter immediately preceding it, between the most recent quarter and the same calendar quarter in the preceding year, and, if applicable, between the current year to date and the same calendar period in the preceding year. Explanations of material changes should include, but not be limited to, changes in the various elements which determine revenue and expense levels. In addition, the analysis should include an explanation of the effect of any changes in accounting principles and practices or in the method of their application that have a material effect on net income as reported.

(h) *Other financial information.* The bank may furnish any additional information related to the periods being reported on which, in the opinion of management, is of significance to investors, such as the seasonality of the bank's business, major uncertainties currently facing the bank, significant accounting changes under consideration and the dollar amount of standby letters of credit. In addition, the bank shall indicate whether any Form F-3 was required to be filed reporting any material unusual charges or credits to income during the most recently completed fiscal quarter or whether any Form F-3 was required to be filed during that period reporting a change in independent accountants.

(i) The financial information to be included in this report should be prepared in conformity with the accounting principles and practices reflected in the financial statements included in the annual report filed with the Board for the preceding fiscal year, except for any subsequent regulatory revisions and changes required to be reported by § 206.7(c)(5) of this part.

[41 FR 46428, Oct. 21, 1976, as amended at 43 FR 60557, Dec. 28, 1978; 44 FR 67965, Nov. 28, 1979; 46 FR 11249, Feb. 6, 1981; 47 FR 4231, Jan. 29, 1982]

§ 206.45 Form for amendment to registration statement or periodic report of bank (Form F-20).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FORM F-20

AMENDMENT TO REGISTRATION STATEMENT OR PERIODIC REPORT OF BANK

GENERAL INSTRUCTIONS

The form set forth hereinafter is not to be used as a blank form to be filled in but is intended solely as a guide in the preparation of an amendment to a previously filed registration statement or report. Attention should be given to the general requirements governing amendments, which are prescribed in § 206.4(w) of Regulation F.

The amendment shall contain the number and caption of each item being amended and each such item shall be restated, as amended, in its entirety. Where a financial statement, or a note or schedule related thereto, is being amended, such statement, note, or schedule likewise shall be restated in its entirety.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Washington, D.C. 20551

AMENDMENT NUMBER ——

To[1]

On

FORM F ——[2]

Pursuant to section 12 or 13 of the Securities Exchange Act of 1934

(Exact name of bank as specified in charter)

(Address of principal office)

The undersigned bank hereby amends the following items, financial statements or exhibits, constituting part of the aforesaid statement or report, as set forth in the pages attached hereto:

(List all such items, financial statements, exhibits, or other portions amended).

Pursuant to the requirement of the Securities Exchange Act of 1934, the bank has duly caused this amendment to be signed on its behalf by the undersigned, thereunto duly authorized.

Date——

By ——

(Print name and title of signing office under signature)

§ 206.46 Form for registration of additional class of securities of a bank pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (Form F-10).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Washington, D.C. 20551

FORM F-10

Registration Statement for Additional Classes of Securities of a Bank

Pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934.

(Exact name of bank as specified in charter)

(Address of principal office)

(State of incorporation or organization)

(I.R.S. Employer Identification No.)

Securities being registered pursuant to section 12(b) of the Act:

Title of class.

Name of each exchange on which class is being registered.

Title of each class of equity securities being registered pursuant to section 12(g) of the Act:

GENERAL INSTRUCTIONS

1. *Applicability of this form.*

This form may be used for registration of the following securities pursuant to the Securities Exchange Act of 1934:

(a) For registration pursuant to section 12(g) of the Act of any class of equity securities of a bank which has one or more other classes of securities registered pursuant to either section 12 (b) or (g) of the Act.

(b) For registration on a national securities exchange pursuant to section 12(b) of the Act of any class of securities of a bank which has one or more other classes of securities so registered on the same or another securities exchange.

2. *Preparation of registration statement.*

This form is not to be used as a blank form to be filled in but only as a guide in the preparation of a registration statement. Particular attention should be given to the general requirements in § 206.4 of Federal Reserve Regulation F. The statement shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers with respect thereto

---

[1] Indicate appropriate designation of statement or report being amended, such as "Registration Statement" or "Annual Report for year ended December 31, 19——."

[2] Indicate the number of the form on which the statement or report was filed, such as "Form F-1."

are prepared in the manner specified in § 206.4(u).

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 1. Stock to be registered.

If stock is being registered, state the title of the class and furnish the following information (See Instruction 1):

(a) Outline briefly (1) dividend rights; (2) voting rights; (3) liquidation rights; (4) preemptive rights; (5) conversion rights; (6) redemption provisions; (7) sinking fund provisions, and (8) liability to further calls or to assessment.

(b) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(c) Outline briefly any restriction on the repurchase or redemption of shares by the bank while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

Instructions. 1. If a description of the securities comparable to that required here is contained in any other document filed with the Board, such description may be incorporated by reference to such other filing in answer to this item. If the securities are to be registered on a national securities exchange and the description has not previously been filed with such exchange, copies of the description shall be filed with copies of the registration statement filed with the exchange.

2. This item requires only a brief summary of the provisions which are pertinent from an investment standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the governing instruments verbatim; only a succinct resume 1 is required.

3. If the rights evidenced by the securities to be registered are materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other document, include such information regarding such limitation or qualification as will enable investors to understand the rights evidenced by the securities to be registered.

Item 2. Debt securities to be registered.

If the securities to be registered hereunder are bonds, debentures or other evidences of indebtedness, outline briefly such of the following as are relevant (see Instruction 2 below):

(a) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement.

(b) Provisions with respect to the kind and priority of any lien, securing the issue, together with a brief identification of the principal properties subject to such lien.

(c) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(d) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instruction 1. Provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property or property taken by eminent domain, the application of insurance moneys, and similar provisions, need not be described.

(e) The name of the trustee and the nature of any material relationship with the bank or any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action, and what indemnification the trustee may require before proceeding to enforce the lien.

(f) The general type of event which constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture.

Instruction 2. In most cases, debt securities issued by banks need not be registered pursuant to section 12(g) of the Securities Exchange Act; the registration requirements of that section apply only to an "equity security". The term "equity security" is defined by section 3(a)(11) of the Act to mean "any stock or similar security; or any security convertible, with or without consideration, into such a security; or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Board shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security."

Instruction 3. The instructions to Item 1 also apply to this item.

Item 3. Other securities to be registered.

If securities other than those referred to in Items 1 and 2 are to be registered hereunder, outline briefly the rights evidenced thereby. If subscription warrants or rights are to be registered, state the title and amount of securities called for, and the period during which and the price at which the warrants or rights are exercisable.

Instruction. The instructions to Item 1 also apply to this item.

Item 4. Exhibits.

List all exhibits filed as a part of the registration statement.

Signature

Pursuant to the requirements to the Securities Exchange Act of 1934, the bank has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

____

(Name of Bank)

Date ______________________________

By ______________________________

(Name and Title of Signing Officer)

Instructions as to Exhibits

I. If the securities to be registered hereunder are to be registered on an exchange on which other securities of the bank are registered, or are to be registered pursuant to section 12(g) of the Act, the following exhibits shall, subject to § 206.4(q) regarding incorporation of exhibits by reference, be filed with each copy of the registration statement filed with the Board or with an exchange:

1. Specimens or copies of each security to be registered hereunder.

2. Copies of all constituent instruments defining the rights of the holders of each class of such securities, including any contracts or other documents which limit or qualify the rights of such holders.

II. If the securities to be registered are to be registered on an exchange on which no other securities of the bank are registered, the following exhibits shall be filed with each copy of the registration statement filed with each such exchange, but need not be filed with, or incorporated by reference in, copies of the registration statement filed with the Board:

3. Copies of the last annual report filed pursuant to section 13 of the Act or, if no such report has yet been filed, copies of the latest registration statement filed pursuant to section 12 (b) or (g) of the Act.

4. Copies of all current or quarterly reports filed pursuant to section 13 of the Act since the end of the fiscal year covered by the annual report filed pursuant to Instruction 3 above, or if none, since the effective date of the latest registration statement so filed.

5. Copies of the latest definitive proxy statement or information statement, if any, filed with the Board pursuant to section 14 of the Act.

6. Copies of the charter and bylaws, or instruments corresponding thereto, and copies of any other documents defining the rights of holders of the securities to be registered.

7. Specimens or copies of each security to be registered hereunder.

8. Copies of the last annual report submitted to stockholders by the bank or its predecessors. Such annual report shall not be deemed to be "filed" with the exchange or otherwise subject to the liabilities of section 18 of the Act, except to the extent it may already be subject thereto.

§ 206.47 Form for acquisition statement filed pursuant to § 206.4(h)(3) and amendments thereto filed pursuant to § 206.4(h)(4) of Regulation F.

Board of Governors of the Federal Reserve System

Form F-11

Acquisition statement to be filed pursuant to § 206.4(h)(3) or § 206.4(h)(4) of Regulation F (Amendment No.).

____

(Name and Address of Bank)

____

(Title of Class of Securities)

____

(CUSIP Number)

____

(Name, Address and Telephone Number or Person Authorized to Receive Notices and Communications)

____

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Form F-11A, and is filing this form because of § 206.4(h)(3) (ii)(C) or (D), check the following box [ ].

Note: Eight copies of this form, including all exhibits, should be filed with the Board. See § 206.4(h)(3)(i) for other parties to whom copies are to be sent.

Special Instructions for Complying With Form F-11

Under sections 13(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Board is authorized to solicit the information required to be supplied by this form by certain security holders of certain banks.

Disclosure of the information specified in this schedule is mandatory, except for Social Security or I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Failure to disclose the information requested by this schedule, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

General Instructions

A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer incomplete, unclear or confusing. Matter incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required.

C. If the statement is filed by a general or limited partnership, syndicate, or other group, the information called for by Items 2-6, inclusive, shall be given with respect to (i) each partner of such general partnership; (ii) each partner who is demonstrated as a general partner who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this instruction is a corporation, the information called for by the above mentioned items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation. Executive officer shall mean the president, secretary, treasurer, and any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs or has the power to perform similar policy making functions for the corporation.

Item 1—Security and Bank

State the title of the class of equity securities to which this statement relates and the name and address of the principal office of the bank.

Item 2—Identity and Background

If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal office and the information required by (d) and (e) of this item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in (a) through (f) of this Item with respect to such person(s).

(a) Name:

(b) Residence or business address;

(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is conducted;

(d) Whether or not, during the last five years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, any penalty imposed, or other disposition of the case.

(e) Whether or not, during the last five years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violation of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws; and, if so, identify and describe such proceedings and summarize the terms of such judgment, decree or final order; and

(f) Citizenship.

Item 3—Source and Amount of Funds or Other Consideration

State the source and the amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is or will be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, trading or voting the securities, a description of the transaction and the names of the parties thereto. Where material, such information should also be provided with respect to prior acquisitions not previously reported pursuant to this regulation. If the source of all or any part of the funds is a loan made in the ordinary course of business by a bank, as defined in section 3(a)(6) of the Act, the name of the bank shall not be made available to the public if the person at the time of filing the statement so requests in writing and files such request, naming such bank with the Board. If the securities were acquired other than by purchase, describe the method of acquisition.

Item 4—Purpose of Transaction

State the purpose or purposes of the acquisition of securities of the bank. Describe any plans or proposals which the reporting persons may have which relate to or would result in:

(a) The acquisition by any person of additional securities of the bank, or the disposition of securities of the bank;

(b) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the bank or any of its subsidiaries;

(c) A sale or transfer of a material amount of assets of the bank or of any of its subsidiaries;

(d) Any change in the present board of directors or management of the bank, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the board;

(e) Any material change in the present capitalization or dividend policy of the bank;

(f) [Reserved]

(g) Changes in the bank's charter, bylaws or instruments corresponding thereto or other actions which may impede the acquisition of control of the bank by any person;

(h) Causing a class of securities of the bank to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

(i) A class of equity securities of the bank becoming eligible for termination of registration pursuant to section 12(g)(4) of the Act; or

(j) Any action similar to any of those enumerated above.

Item 5—Interest in Securities of the Bank

(a) State the aggregate number and percentage of the class of securities identified pursuant to Item 1 (which may be based on the number of securities outstanding as contained in the most recently available filing with the Board by the bank unless the filing person has reason to believe such information is not current) beneficially owned (identifying those shares which there is a right to acquire) by each person named in Item. 2. This mentioned information should also be furnished with respect to persons who, together with any of the persons named in Item 2, comprise a group within the meaning of section 13(d)(3) of the Act;

(b) For each person named in response to paragraph (a), indicate the number of shares as to which there is sole power to vote or to direct the vote, shared power to vote or to direct the vote, sole power to dispose or to direct the disposition, or shared power to dispose or to direct the disposition. Provide the applicable information required by Item 2 with respect to each person with whom the power to vote or to direct the vote or to dispose or direct the disposition is shared;

(c) Describe any transactions in the class of securites reported on that were effected during the past sixty days or since the most recent filing on Form F-11, whichever is less, by the persons named in response to paragraph (a).

Instruction. The description of a transaction required by Item 5(c) shall include, but not necessarily be limited to: (1) The identity of the person covered by Item 5(c) who effected the transaction; (2) the date of the transaction; (3) the amount of securities involved; (4) the price per share or unit; and (5) where and how the transaction was effected.

(d) If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified.

(e) If applicable, state the date on which the reporting person ceased to be the beneficial owner of more than five percent of the class of securities.

Instruction. For computations regarding securities which represent a right to acquire an underlying security, see § 206.4(h)(5)(iv) and the note thereto.

Item 6—Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Bank

Describe any contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any person with respect to any securities of the bank, including but not limited to transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees or profits, division of profits or losses, or the giving or withholding of proxies, and name the persons with whom such contracts, arrangements, understandings or relationships have been entered into. Include such information for any of the securities that are pledged or otherwise subject to a contingency the occurrence of which would give another person voting power or investment power over such securities, except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

Item 7—Material To Be Filed as Exhibits

The following shall be filed as exhibits: Copies of written agreements relating to the filing of joint acquisition statements as required by § 206.4(h)(g)(v) and copies of all written agreements, contracts, arrangements, understandings, plans, or proposals relating to: (1) The borrowing of funds to finance the acquisition as disclosed in Item 3; (2) the acquisition of bank control, liquidation, sale of assets, merger, or change in business or corporate structure, or any other matter as disclosed in Item 4; and (3) the transfer or voting of the securities, finder's fees, joint ventures, options, puts, calls, guarantees of loans, guarantees against loss or of profit, or the giving or withholding of any proxy as disclosed in Item 6.

Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct:

Date

Signature

Name/Title

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this purpose which is already on file with the Board may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001).

[44 FR 67966, Nov. 28, 1979]

§ 206.48 Short form for statement filed pursuant to § 206.4(h)(3) and amendments thereto filed pursuant to § 206.4(h)(4) of Regulation F (Form F-11A).

Board of Governors of the
Federal Reserve System
Washington, D.C. 20551.

FORM F-11A

Short Form Ownership Statement to be Filed Pursuant to § 206.4(h)(3) or 206.4(h)(4)

(Amendment No.)

(Name and Bank)

(Title of Class of Securities)

(CUSIP Number)

SPECIAL INSTRUCTIONS FOR COMPLYING WITH FORM F-11A

Under sections 13(d), 13(g), and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Board is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain banks.

Disclosure of the information specified in this schedule is mandatory, except for Social Security or I.R.S. identification numbers the disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Failure to disclose the information requested by this schedule, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

General Instructions

A. Statements containing the information required by this Form shall be filed not later than February 14 following the calendar year covered by the statement or within the time specified in § 335.4(h)(2)(ii)(B), if applicable.

B. Information contained in a form which is required to be filed by the Securities and Exchange Commission's rules under section 13(f) of the Act [15 U.S.C. 78m(f)] for the same calendar year as that covered by a statement on this Form may be incorporated by reference in response to any of the items of this Form. If such information is incorporated by reference in this Form, copies of the relevant pages of such form shall be filed as an exhibit to this Form.

C. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

Item 1(a) Name of Bank:

Item 1(b) Address of Bank's Principal Office:

Item 2(a) Name of Person Filing:

Item 2(b) Address of Principal Business Office or, if none, Residence:

Item 2(c) Citizenship:

Item 2(d) Title of Class of Securities:

Item 3 If this statement is filed pursuant to § 206.4(h)(3)(i) or 206.4(h)(4)(ii) check whether the person filing is a:

(a) [ ] Broker or Dealer registered under section 15 of the Act.

(b) [ ] Bank as defined in section 3(a)(6) of the Act.

(c) [ ] Insurance Company as defined in section 3(a)(19) of the Act.

(d) [ ] Investment Company registered under section 8 of the Investment Company Act.

(e) [ ] Investment Adviser registered under section 203 of the Investment Advisers Act of 1940.

(f) [ ] Employee Benefit Plan, Pension Fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974, or Endowment Fund.

(g) [ ] Parent Holding Company, in accordance with § 206.4(h)(3)(ii)(A)(2)(g) (Note: See Item 7).

(h) [ ] Group, in accordance with § 206.4(h)(3)(ii)(A)(2)(h).

Item 4—Ownership

If the percent of the class owned, as of December 31 of the year covered by the statement, or as of the last day of any month described in § 206.4(h)(3)(B) if applicable, exceeds five percent, provide the following information as of that date and identify those shares for which there is a right to acquire.

(a) Amount beneficially owned.

(b) Per cent of class.

(c) Number of shares as to which such person has:

(i) Sole power to vote or to direct the vote.

(ii) Shared power to vote or to direct the vote.

(iii) Sole power to dispose or to direct the disposition of.

(iv) Shared power to dispose or to direct the disposition of.

Instruction: for computations regarding securities which represent a right to acquire an underlying security see § 206.4(h)(5)(iv)(A).

Item 5—Ownership of Five Per Cent or Less of a Class

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five per cent of the class of securities, check the following [ ].

Instructions: Dissolution of a group requires a response to this item.

Item 6—Ownership of More Than Five Per Cent on Behalf of Another Person

If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five per cent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of employee benefit plan, pension fund or endowment fund is not required.

Item 7—Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent Holding Company

If a parent holding company has filed this schedule, pursuant to § 206.4(h)(3)(ii)(A)(2)(g), so indicate under Item 3(g) and attach an exhibit stating the identity and the Item 3 classification of the relevant subsidiary. If a parent holding company has filed this schedule pursuant to § 206.4(h)(2)(ii), attach an exhibit stating the identification of the relevant subsidiary.

Item 8—Identification and Classification of Members of the Group

If a group has filed this schedule pursuant to § 206.4(h)(3)(ii)(A)(2)(h), so indicate under Item 3(h) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to § 206.4(h)(3)(iii), attach an exhibit stating the identity of each member of the group.

Item 9—Notice of Dissolution of Group

Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by members of the group in their individual capacity. See Item 5.

Item 10—Certification

The following certification shall be included if the statement is filed pursuant to § 206.4(h)(3)(ii).

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the bank and were not acquired in connection with or as a participant in any transaction having such purposes or effect.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date

Signature

Name/Title

The orignial statement shall be signed by each person on whose behalf the statement is filed, or by his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

NOTE: Eight copies of this statement, including all exhibits, should be filed with the Board.

[44 FR 67967, Nov. 28, 1979]

§ 206.51 Form for proxy statement or statement where the bank does not solicit proxies (Form F-5).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FORM F-5

Proxy Statement or Statement Where Management Does Not Solicit Proxies

GENERAL INSTRUCTIONS

Each statement required under § 206.5(a) of this part shall, to the extent applicable, include the information called for under each of the times below. In the preparation of the statement, particular attention should be given to the definitions in § 206.2 of this part.

This form is not to be used as a blank form to be filled in nor is it intended to prescribe a form for presentation of material in the statement. Its purpose is solely to prescribe the information required to be set forth in the statement; any additional information that management or the soliciting persons deem appropriate may be included.

Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.

Item 1. Revocability of proxy.

State whether the person giving the proxy has the power to revoke it. If the right of revocation before the proxy is exercised is limited or is subject to compliance with any formal procedure, briefly describe such limitation or procedure.

Item 2. Dissenters' rights of appraisal or similar rights of dissenters with respect to any matter to be acted upon and indicate any statutory procedure required to be followed by dissenting security holders in order to perfect such rights.

Where such rights may be exercised only within a limited time after the date of the adoption of a proposal, the filing of a charter amendment or other similar act, state whether the person solicited will be notified of such date.

Instruction 1. Indicate whether a security holder's failure to vote against a proposal will constitute a waiver of his appraisal or similar rights and whether a vote against a proposal will be deemed to satisfy any notice requirements under State law with respect to appraisal rights. If the State law is unclear, state what position will be taken in regard to those matters.

Item 3. Persons making the solicitation.

(a) Solicitations not subject to § 206.5(i).

(1) If the solicitation is made by the bank, so state. Give the name of any director of the bank who has informed the bank in writing that he intends to oppose any action intended to be taken by the bank and indicate the action which he intends to oppose.

(2) If the solicitation is made otherwise than by the bank, so state and give the names of the persons by whom and the persons on whose behalf it is made.

(3) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, and (ii) the cost or anticipated cost thereof.

(4) State the names of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly.

(b) Solicitations subject to § 206.5(i)

(1) State by whom the solicitation is made and describe the methods employed and to be employed.

(2) If regular employees of the bank or any other participants in a solicitation have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed, and the manner and nature of their employment for such purpose.

(3) If specially engaged employees, representatives, of other persons have been or are to be employed to solicit security holders, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, (ii) the cost or anticipated cost thereof, and (iii) the approximate number of such employees or employees of any other person (naming such other person) who will solicit security holders.

(4) State the total amount estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with, the solicitation of security holders.

(5) State by whom the cost of the solicitation will be borne initially by any person other than the bank, state whether reimbursement will be sought from the bank, and, if so, whether the question of such reimbursement will be submitted to a vote of security holders.

(6) If any such solicitation is terminated pursuant to a settlement between the bank and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the bank.

Instruction 1. With respect to solicitations subject to § 206.5(i), costs and expenditures within the meaning of this Item 3 shall include fees for attorneys, accountants, public relations or financial advisors, solicitors, advertising, printing, transportation, litigation, and other costs incidental to the solicitation, except that the bank may exclude the amounts of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to that effect is included in the proxy statement.

2. The information required pursuant to paragraph (b)(6) of this Item should be included in any amended or revised proxy statement or other soliciting material relating to the same meeting or subject matter furnished to security holders by the bank subsequent to the date of settlement.

Item 4. Interest of certain persons in matters to be acted upon. (a) Solicitations not subject to § 206.5(i). Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) If the solicitation is made on behalf of the bank, each person who has been a director or officer of the bank at any time since the beginning of the last fiscal year.

(2) If the solicitation is made otherwise than on behalf of the bank, each person on whose behalf the solicitation is made. Any person who would be a participant in a solicitation for purposes of § 206.5(i), as defined in subparagraph 2(i) (C), (D), (E), and (F) thereof, shall be deemed a person on whose behalf the solicitation is made for purposes of this paragraph (a).

(3) Each nominee for election as a director of the bank.

(4) Each associate of the foregoing persons.

Instruction. Except in the case of a solicitation subject to § 206.5 of this part made in opposition to another solicitation subject to § 206.5 of this part, this sub-item (a) shall not apply to any interest arising from the ownership of securities of the bank where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(b) Solicitations subject to § 206.5(i).

(1) Describe briefly any substantial interest, direct or indirect, by securing holdings or otherwise, of each participant, as defined in § 206.5(i)(2)(i), (b), (c), (d), and (e), in any matter to be acted upon at the meeting, and include with respect to each participant the information, or a fair and adequate summary thereof, required by Items 2(a), 2(d), 3, 4(b), and 4(c) of Form F-6.

With respect to any person named in answer to Item 6(b), describe any substantial interest, direct or indirect, by security holdings or otherwise, that he has in any matter to be acted upon at the meeting, and furnish the information called for by Item 4(b) and (c) of Form F-6.

Item 5. Voting securities and principal holders thereof.

(a) State, as to each class of voting securities of the bank entitled to be voted at the meeting, the number of shares outstanding and the number of votes to which each class is entitled.

(b) Give the date as of which the record of security holders entitled to vote at the meeting will be determined. If the right to vote is not limited to security holders of record on that date, indicate the conditions under which other security holders may be entitled to vote.

(c) If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights, (1) make a statement that they have such rights, (2) briefly describe such rights, (3) state briefly the conditions precedent to the exercise thereof, and (4) if discretionary authority to cumulate votes is solicited, so indicate.

(d) *Security ownership of certain beneficial owners.* Furnish the following information as of the most recent practicable date in substantially the tabular form indicated, with respect to any person (including any "group" as the term is used in section 13(d)(3) of the Securities Exchange Act of 1934) who is known to the bank to be the beneficial owner of more than five per cent of any class of the bank's securities. Show in Column (3) the total number of shares beneficially owned and in Column (4) the percent of class so owned. Of the number of shares shown in Column (3), indicate by footnote or otherwise the amount of shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in § 206.4(h)(5)(iv)(A).

(1) Title of Class———
(2) Name and Address of Beneficial Owner—
(3) Amount of and Nature of Beneficial Ownership———
(4) Percent of Class ———

(e) *Security ownership of management.* Furnish the following information, as of the most recent practicable date in substantially the tabular form indicated, as to each class of equity securities of the bank or any of its parents or subsidiaries, other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, and directors and officers of the bank as a group, without naming them. Show in Column (2) the total number of shares beneficially owned and Column (3) the per cent of class so owned. Of the number of shares shown in Column (2), indicate, by footnote or otherwise the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 206.4(h)(5)(iv)(A).

(1) Title of Class———
(2) Amount and Nature of Beneficial Ownership ———
(3) Per cent of Class———

(f) *Recent change in control.* If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the bank has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person(s), the basis of the control, the date and a description of the transaction(s) which resulted in the change of control, the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control, and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate the identity of the bank so omitted and shall be filed separately with the Board. If the source of all or any part of the funds used to acquire control of the bank was a loan made by a bank as defined by section 3(a)(6) of the Act indicate whether there exists any agreement, arrangement or understanding pursuant to which the bank maintains or would maintain a correspondent deposit account at such lending bank.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to the election of directors and other matters should be described.

(g) *Anticipated change in control.* Describe any arrangements, known to the bank, including any pledge by any person of securities of the bank or any of its parents, the operation of which may at a subsequent date result in a change in control of the bank. A description is not required of ordinary default provisions contained in any charter, trust indentures or other governing instruments relating to securities of the bank.

Instructions to Item 5 (d), (e), and (f). 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the bank or its subsidiaries, plus securities deemed outstanding pursuant to § 206.4(h)(5)(iv)(A).

2. For the purposes of this item, beneficial ownership shall be determined in accordance with § 206.4(h)(5). Include such additional subcolumns or any other appropriate explanation of Column (3) necessary to reflect amounts as to which the beneficial owner has (1) sole voting power, (2) shared voting power, (3) sole investment power, and (4) shared investment power.

3. The bank shall be deemed to know the contents of any statement filed with the Board pursuant to section 13(d) of the Act. When applicable, a bank may rely upon information set forth in such statements unless the bank knows or has reason to believe that such information is not complete or accurate, or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (d), the bank may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities,

appropriate disclosure should be made to avoid confusion.

Item 6. Directors and Principal Officers. If action is to be taken with respect to election of directors, furnish the following information in tabular form to the extent practicable, with respect to each person nominated for election as a director and each other person whose term of office as a director will continue after the meeting. However, if the solicitation is made on behalf of persons other than the bank, the information required need only be furnished as to nominees of the persons making the solicitation.

(a) *Identification of directors.* List all directors of the bank and all persons nominated or chosen to become directors. Indicate all positions and offices with the bank held by each person named. State the age of the persons named, their terms of office, and the periods during which each such person has served. Briefly describe any arrangement or understanding between each director and any other person pursuant to which such director was selected to serve in that capacity.

Instructions

1. Do not include any arrangements or understandings with directors of the bank acting solely in their capacities as such.

2. No nominee or person chosen to become a director or who has not consented to act as such should be named in response to this item. In this regard, see § 206.5(d).

3. No information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

4. In connection with action to be taken concerning the election of directors, if fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

(b) *Family relationships.* State the nature of any family relationships between any director, officer, or person nominated or chosen by the bank to become a director or officer.

Instruction. The term "family relationships" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) *Business experience.* (1) Give a brief account of the business experience during the past five years of each director or person nominated or chosen to become a director, including principal occupations and employment during that period, and the name and principal business of any corporation or other organization in which such occupations and employment were carried on.

(2) Indicate any other directorship h
by each director or person chosen to becc
a director in any company with a class of
curities registered pursuant to section 1
the Act.

(d) *Involvement in certain legal proce
ings.* Describe any of the following eve
which occurred during the past five ye
and which are material to an evaluation
the ability or integrity of any director
person chosen or nominated to become a
rector of the bank:

(1) A petition under the Bankruptcy
or any state insolvency law was filed by
against such person, or a receiver, fi
agent or similar officer was appointed b
court for the business or property of s
person, or any partnership in which he
a general partner at or within two ye
before the time of such filing, or any co
ration or business association of which
was an executive officer at or within
years before the time of such filing;

(2) Such person was convicted in a cri
nal proceeding or is a named subject o
pending criminal proceeding (exclud
traffic violations and other minor offens

(3) Such person was the subject of
order, judgment, or decree, not subsequ
ly reversed, suspended or vacated, of
court of competent jurisdiction perman
ly or temporarily enjoining him from,
otherwise limiting the following activitie

(i) Acting as an investment adviser, un
writer, broker or dealer in securities, o
an affiliated person, director or employe
any investment company, bank, savings
loan association or insurance company,
engaging in or continuing any conduc
practice in connection with such activity;

(ii) Engaging in any type of business p
tice; or

(iii) Engaging in any activity in connec
with the purchase or sale of any securit
in connection with any violation of fed
or state securities laws.

(4) Such person was the subject of
order, judgment or decree, not subseque
reversed, suspended or vacated, of any
eral or state authority barring, suspend
or otherwise limiting for more than 60 d
the right of such person to engage in
activity described in subparagraph
above, or to be associated with persons
gaged in any such activity.

(5) Such person was found by a cour
competent jurisdiction in a civil action
by a government agency, to have viol
any federal or state securities law, and
judgment in such civil action or finding
the government agency has not been su
quently reversed, suspended, or vacated.

Instructions. 1. For purposes of com
ing the five year period referred to in
paragraph, the date of a reportable e
shall be deemed the date on which the f

order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

2. If any event specified in this subparagraph (e) has occurred and information in regard thereto is omitted on the ground that it is not material, the bank may furnish to the Board at the time of filing, as supplemental information and not as part of the statement, materials to which the omission relates, a description of the event, and a statement of the reasons for the omission of information in regard thereto.

3. The bank is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. If the information called for by Item 6(e) is being presented in a proxy or information statement, no information need be given respecting any director whose term in office as director will not continue after the meeting to which the statement relates.

(e) Describe any of the following relationships which exist:

(1) If the nominee or director has during the past five years had a principal occupation or employment with any of the bank's parents, subsidiaries or other affiliates;

(2) If the nominee or director is related to an officer of any of the bank's parents, subsidiaries or other affiliates by blood, marriage or adoption (except relationships more remote than first cousin);

(3) If the nominee or director is, or has within the last two full fiscal years been, an officer, director or employee of, or owns, or has within the last two full fiscal years owned, directly or indirectly, in excess of 1 percent equity interest in any firm, corporation or other business or professional entity:

(i) Which has made payments to the bank or its subsidiaries for property or services during the bank's last full fiscal year in excess of 1 percent of the bank's consolidated gross revenues for its last full fiscal year;

(ii) Which proposes to make payments to the bank or its subsidiaries for property or services during the current fiscal year in excess of 1 percent of the bank's consolidated gross revenues for its full fiscal year;

(iii) To which the bank or its subsidiaries were indebted at any time during the bank's fiscal year in an aggregate amount in excess of 1 percent of the bank's total consolidated assets at the end of such fiscal year or $5,000,000, whichever is less;

(iv) To which the bank or its subsidiaries have made payments for property or services during such entity's last full fiscal year in excess of 1 percent of such entity's gross revenues for its last full fiscal year;

(v) To which the bank or its subsidiaries propose to make payments for property or services during such entity's current fiscal year in excess of 1 percent of such entity's consolidated gross revenues for its last full fiscal year;

(vi) In order to determine whether payments made or proposed to be made exceed 1 percent of the consolidated gross revenues of any entity other than the bank for such entity's last full fiscal year, it is appropriate to rely on information provided by the nominee or director;

(vii) In calculating payments for property and services the following may be excluded:

(A) Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a public utility at rates or charges fixed in conformity with law or governmental authority;

(B) Payments which arise solely from the ownership of securities of the bank and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received;

(viii) In calculating indebtedness for purposes of subparagraph (iii) above, debt securities which have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association may be excluded.

(4) That the nominee or director is a member or employee of, or is associated with, a law firm which the bank has retained in the last two full fiscal years or proposes to retain in the current fiscal year;

(5) That the nominee or director is a control person of the bank (other than solely as a director of the bank).

(6) In addition, the bank should disclose any other relationships it is aware of between the director or nominee and bank or its management which are substantially similar in nature and scope to those relationships listed above.

NOTE: In the Board's view, where significant business or personal relationships exist between the director or nominee and the bank or its management, including, but not limited to, those as to which disclosure would be required pursuant to item 6(b), characterization of a director or nominee by any "label" connoting a lack of relationship to the issuer and its management may be materially misleading.

(f) *Committees.* (1) State whether or not the bank has standing audit, nominating and compensation committees of the Board of Directors, or committees performing similar functions. If the bank has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by such committees.

(2)(a) If the bank has a nominating or similar committee, state whether the committee will consider nominees recommended by shareholders and, if so;

(b) Describe the procedures to be followed by shareholders in submitting such recommendations.

(g) *Director Attendance.* State the total number of meetings of the Board of Directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of (1) the total number of meetings of the board of directors (held during the period for which he has been a director) and (2) the total number of meetings held by all committees of the board on which he served (during the periods that he served).

(h) *Resignation of Directors.* If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices, and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement.

(i) *Shares voted at last meeting.* With respect to those classes of voting stock which participated in the election of directors at the most recent meeting at which directors were elected:

(1) State in an introductory paragraph the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors; and (2) disclose in tabular format, following such introductory paragraph, the percentage of total shares cast for and withhold from the vote for or, where applicable, cast against, each nominee, which respectively, were voted for and withheld from the vote for, or voted against, such nominee. When groups of classes or series of classes vote together in the election of a director of directors, they shall be treated as a single class for the purpose of the preceding sentence.

Instructions. 1. Calculate the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors, referred to in paragraph g(1), by dividing the total shares cast for and withheld from the vote for or, where applicable, voted against, the director in respect of whom the highest aggregate number of shares was cast by the total number of shares outstanding which were eligible to vote as of the record date for the meeting.

(2) No information need be given in response to Item 6(g) unless, with respect to any class of voting stock (or group of classes which voted together), 5 percent or more of the total shares cast for and withheld from the vote for or, where applicable, cast against any nominee were withheld from the vote for or case against such nominee.

(3) If a bank elects less than the entire board of directors annually, disclosure is required as to all directors if 5 percent or more of the total shares cast for and withheld from, the vote for, or where applicable, cast against any incumbent director were withheld from, or cast against the vote for such director at the meeting at which he was most recently elected.

(4) No information need be given in response to Item 6(g) if the bank has previously furnished to its security holders a report of the results of the most recent meeting of security holders at which directors were elected which includes: (1) A description of each matter voted upon at the meeting and a statement of the percentage of the shares voting which were voted for and against each such matter; and (2) the information which would be called for by this Item 6(g). If a bank has previously furnished such results to its security holders, this fact should be set forth in the bank's cover letter accompanying the filing of preliminary proxy materials with the Board.

(j) If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

Item 7. Remuneration and Other Transactions With Management and Others. Furnish the information called for by this item if action is to be taken with respect to (i) the election of directors, (ii) any bonus, profit sharing or other remuneration plan, contract or arrangement in which any director, nominee for election as a director, or officer of the bank will participate, (iii) any pension or retirement plan in which any such person will participate, or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders, as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the management, the information required need be furnished only as to nominees for election as directors and as to their associates.

(a) *Current remuneration.* Furnish the information required in the table below, in substantially the tabular form as specified, concerning all remuneration of the following persons and group for services in all capacities to the bank during the bank's last fiscal year.

(1) *Five officers or directors.* Each of the five most highly compensated officers or di-

rectors of the bank as to whom the total remuneration required to be disclosed in Columns C1 and C2, below, would exceed $50,000, naming each such person; and

(2) *All officers and directors.* All officers and directors of the bank as a group, stating the number of persons in the group without naming them.

REMUNERATION TABLE

(A) Name of individual or number of persons in group	(B) Capacities in which served	(C) Cash and cash equivalent forms of remuneration		(D) Aggregate of contingent forms of remuneration
		(C1) Salaries, fees, directors' fees, commissions, and bonuses	(C2) Securities or property, insurance benefits or reimbursement, personal benefits	

(3) *Specified Tabular Format.*

Instructions to Item 7(a). 1. Columns A and B. Persons subject to this item. (a) This item applies to any person who was an officer or director of the bank at any time during the fiscal year. However, information need not be given for any portion of the period during which such person was not an officer or director of the bank, provided a statement to that effect is made. (b) The term officer is defined in § 206.2(q). (c) For the purposes of this item "bank" shall include the bank and all its subsidiaries.

2. *Column C.* (a) Column C1 shall include all cash remuneration distributed or accrued in the form of salaries, fees, directors' fees, commissions and bonuses.

(b) Column C2 shall include the following: (i) *Securities or property.* Where any of the specified persons or group (a) exercises any option, right or similar election in connection with any contract, agreement, plan or arrangement, or (b) becomes entitled without further contingencies to retain securities or property, state the spread between the acquisition price, if any, and the fair market price of all securities or property acquired under any contract, agreement, plan or arrangement. The fair market price of any such securities or property shall be determined as of the date during the fiscal year that either of the events in (a) or (b) of this paragraph occurs, or if both events are contemplated, the date of the latter event.

(ii) *Personal benefits.* (A) The value of personal benefits which are not directly related to job performance, which are furnished by the bank directly or through third parties to each of the specified persons and group, or benefits furnished by the bank to other persons which indirectly benefit the specified persons. Such personal benefits shall include the costs of any premiums or benefits paid by the bank for any life or health insurance policy or health plan of which bank is not the sole beneficiary.

(B) Such benefits shall be valued on the basis of the aggregate actual cost to the bank. Information need not be furnished for any such benefit provided by the bank which does not discriminate in favor of officers or directors and which is available generally to all salaried employees.

(C) If the bank cannot determine without unreasonable effort or expense the specific amount of certain personal benefits, or the extent to which benefits are personal rather than business, the amount of such personal benefits may be omitted from the table provided that, after reasonable inquiry, the bank has concluded that the aggregate amounts of such personal benefits that cannot be specifically or precisely ascertained do not in any event exceed $10,000 as to each person or, in the case of a group, $10,000 for each person in the group and has concluded that the information set forth in the table is not rendered materially misleading by virtue of the omission of the value of such personal benefits.

3. *Column D.* Column D shall include remuneration of the specified persons and group in whole or in part for services rendered during the latest fiscal year (including the forms of remuneration described in paragraphs (a) through (c) below) if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder is subject to future events.

(a) *Pensions or retirement plans; annuities; employment contracts; deferred compensation plans.*

(i) As to each of the specified persons and group, the amount expensed for financial reporting purposes by the bank for the year which represents the contribution, payment, or accrual for the account of any such person or group under any existing pension or retirement plans, annuity contracts, deferred compensation plans, or any other similar arrangements. Such amounts should be reflected as remuneration for the fiscal year under all such plans or arrangements, including plans qualified under the Internal Revenue Code, unless in the case of a defined benefit or actuarial plan, the amount of the contribution, payment, or accrual in respect to a specified person is not and cannot readily be separately or individually calculated by the regular actuaries for the plan.

(ii) If amounts are excluded from the table pursuant to the previous provision, include a footnote to the table: (a) Stating the fact; (b) disclosing the percentage which the aggregate contributions to the plan bear to the total remuneration of plan participants covered by such plan; and (c) briefly describing the remuneration covered by the plan.

(b) *Incentive and compensation plans and arrangements.*

(i) With respect to stock options, stock appreciation rights plans, phantom stock plans and any other incentive or compensation plan or arrangement pursuant to which the measure of benefits is based on objective standards or on the value of securities of the bank or another person granted, awarded or entered into at any time in connection with services to the bank, include as remuneration of each of the specified persons and group any attributable amount expensed by the bank for financial reporting purposes for the fiscal year as remuneration for any such person or group.

(ii) Where amounts are expensed and reported in the remuneration table, and amounts are credited in a subsequent year in connection with the same plan or arrangement for any proper reason including a decline in the market price of the securities, such credit may be reflected as a reduction of the remuneration reported in Column D. If amounts credited are reflected in the table, include a footnote stating the amount of the credit and briefly describe such treatment.

(iii) The term "options" as used in this item includes all options, warrants, or rights, other than those issued to security holders as such on a pro rata basis.

(c) *Stock purchase plans; profit sharing and thrift plans.* Include the amount of any contribution, payment or accrual for the account of each of the specified persons and groups under any stock purchase, profit sharing, thrift, or similar plans which has been expensed during the fiscal year by the bank for financial reporting purposes. Amounts reflecting contributions under plans qualified under the Internal Revenue Code may not be excluded.

4. *Other permitted disclosure.* The bank may provide additional disclosure through a footnote to the table, through additional columns, or otherwise, describing the components of aggregate remuneration in such greater detail as is appropriate.

5. *Definition of "Plan."* The term "plan" as used in this item includes all plans, contracts, authorizations, or arrangements whether or not set forth in any formal documents.

6. *Transactions with third parties.* Item 7(a), among other things, includes transactions between the bank and a third party when the primary purposes of the transaction is to furnish remuneration to the persons specified in Item 7(a). Other transactions between the bank and third parties in which persons specified in Item 7(a) have an interest, or may realize a benefit, generally are addressed by other disclosure requirements concerning the interest of management and others in certain transactions. Item 7(a) does not require disclosure of remuneration paid to a partnership in which any officer or director was a partner; any such transactions should be disclosed pursuant to these other disclosure requirements, and not as a note to the remuneration table presented pursuant to Item 7(a).

[*End of Instructions to Item 7(a)*]

(b) *Proposed remuneration.* Briefly describe all remuneration payments proposed to be made in the future pursuant to any existing plan or arrangement to the persons and group specified in Item 7(a). As to defined benefit or actuarial plans, with respect to which amounts are not included in the table pursuant to Instruction 3(a) to Item 7(a), include a separate table showing the estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classification.

Instruction. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in favor of officers or directors of the bank and which are available generally to all salaried employees.

(c) *Options, warrants, or rights.* Furnish the following information as to all options to purchase any securities from the bank which were granted to or exercised by the following persons since the beginning of the bank's last fiscal year, and as to all options held by such persons as of the latest practicable date: (i) Each director or officer named in answer to paragraph (a)(1), naming each such person; and (ii) all directors and officers of the bank as a group, without naming them;

(1) As to options granted during the period specified state: (i) The title and aggregate amount of securities called for; (ii) the average option price per share; and (iii) if the option price was less than 100 percent of the market value of the security on the date of grant, state such fact, and the market price on such date, shall be disclosed.

(2) As to options exercised during the period specified, state (i) the title and aggregate amount of securities purchased; (ii) the aggregate purchase price; and (iii) the aggregate market value of the securities purchased on the date of purchase.

(3) As to all unexercised options held as of the latest practicable date (state date), regardless of when such options were granted, state (i) the title and aggregate amount of securities called for, and (ii) the average option price per share.

Instructions. 1. The term "options" as used in this paragraph (c) includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis. Where the average option price per share is called for, the weighted average price per share shall be given.

2. The extension, regranting or material amendment of options shall be deemed the granting of options within the meaning of this paragraph.

3. (i) Where the total market value on the granting dates of the securities called for by all options granted during the period specified does not exceed $10,000 for any officer or director named in answer to paragraph (a)(1), or $40,000 for all officers and directors as a group, this item need not be answered with respect to options granted to such persons or group.

(ii) Where the total market value on the dates of purchases of all securities purchased through the exercise of options during the period specified does not exceed $10,000 for any such period or $40,000 for such group, this item need not be answered with respect to options exercised by such person or group.

(iii) Where the total market value as of the latest practicable date of the securities called for by all options held at such time does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options held as of the specified date by such person or group.

4. If the options relate to more than one class of securities the information shall be given separately for each such class.

(d) *Indebtedness of management.* (1) State as to each of the following persons, herein called specified persons, who was indebted to the bank at any time since the beginning of its last fiscal year: (i) The largest aggregate amount of indebtedness, including extensions of credit or overdrafts, endorsements or guarantees outstanding (in dollar amounts and as a percentage of total equity capital accounts at the time) at any time during such period; (ii) the amount thereof outstanding as of the latest practicable date; (iii) the nature of the indebtedness and of the transaction in which it was incurred; and (iv) the rate of interest paid or charges thereon:

(A) Each director or officer of the bank;

(B) Each nominee for election as director;

(C) Each security holder who is known to bank to own of record or beneficially more than five percent of any class of the bank's voting securities;

(D) Each associate of any such director, officer, nominee or principal security holder.

Instructions. 1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Generally, no information need be given under this Item 7(d), unless any of the following is present:

(a) Such extensions of credit are not made on substantially the same terms, including interest rates, collateral and repayment terms, as those prevailing at the time for comparable transactions with other than the specified persons.

(b) Such extensions of credit were not made in the ordinary course of business.

(c) Such extensions of credit have involved or presently involve more than a normal risk of collectibility or other unfavorable features including the restructuring of an extension of credit or a delinquency as to payment of interest or principal.

(d) The aggregate amount of extensions of credit outstanding at any time from the beginning of the last fiscal year to date to a person specified in (A), (B), and (C) of this paragraph (d)(1) together with the persons' associates exceeded 10% of the equity capital accounts of the bank at that time or $10 million, whichever is less.

NOTE: For purposes of this Instruction 2(d) only: (1) The information called for by paragraphs (d)(1) (iii) and (iv) of this Item 7 need not be furnished; (2) A principal security holder shall mean each security holder known to the bank to own or record or beneficially more than ten (10) per cent of any class of the bank's voting securities; and (3) The name of associate need not be furnished.

(2) If any extension of credit to the specified persons as a group exceeded 20 percent of the equity capital accounts of the bank at any time since the beginning of the last full fiscal year to date, disclose the maximum aggregate amount of extensions of credit to the group during the period, the aggregate amount as a percentage of the equity capital accounts of the bank and include a statement, to the extent applicable, that the bank has had, and expects to have in the future, banking transactions in the ordinary course of its business with directors, officers, principal stockholders and their associates, on substantially the same terms, including interest rates, collateral and repayment terms on extensions of credit, as those prevailing at the same time for comparable transactions with others.

3. If any indebtedness required to be described arose under section 16(b) of the Act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the bank or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

4. Notwithstanding the foregoing, any transaction or series of transactions resulting in indebtedness to the bank or its subsidiaries which may be considered material should be disclosed.

5. If the information called for by Item 7(d) is being presented in Form F-1, § 206.41, the information called for shall be presented for the last three full fiscal years.

(e) *Transactions With Management.* Describe briefly any transaction since the beginning of the bank's last full fiscal year or any presently proposed transactions, to which the bank or any of its subsidiaries was or is to be a party, in which any of the specified persons in Item 7(d) had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest.

Instructions. 1. No information need be given in response to this Item 7(e) as to any remuneration or other transaction reported in response to Item 7(a), (b), (c) or (d), or as to any transaction with respect to which information may be omitted pursuant to Instruction 2 to Item 7(c) or Instruction 2 or 3 to Item 7(d). Instruction 2 to Item 7(a) applies to this Item 7(e).

2. No information need be given in answer to this Item 7(e) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under an indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $40,000 for the term of each transaction or series of transactions; or

(d) The interest of the specified person arises solely from the ownership of securities of the bank and the specified person receives no extra or special benefit not shared on a pro rate basis by all holders of securities of the class.

3. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the bank may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item 7(e) where:

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (4) above, in the aggregate, of less than a 10 per cent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 per cent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transactions with the bank and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction will be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the bank, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof, to the seller. Indicate the principle followed in determining the bank's purchase or sale price and the name of the person making this determination.

6. If the information called for by this Item 7(e) is being presented in Form F-1, § 206.41, the period for which the information called for shall be presented for the previous three years.

7. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

8. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the bank directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 per cent of any class of equity securities of another corporation furnishing the services to the bank.

9. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a mutual interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are among the

factors to be considered in determining the significance of the information to investors.

(f) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the bank's last full fiscal year or any presently proposed transactions, to which any pension, retirement, savings or similar plan provided by the bank, or any of its parents or subsidiaries was or is to be a party, in which any of the specified persons in Item 7(d) had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest.

Instructions. 1. Instructions 2, 3, 4 and 5 to Item 7(e) shall apply to this Item 7(f).

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this Item 7(f) any remuneration received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to paragraph (f) with respect to:

(a) Payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;

(b) Payment of remuneration for services not in excess of 5 per cent of the aggregate remuneration received by the specified person during the bank's last fiscal year from the bank; or

(c) Any interest of the bank which arises solely from its general interest in the success of the plan.

(g) *Legal Proceedings.* Any material proceedings to which any director, officer or affiliate of the bank, and persons holding in excess of five per cent of the bank's outstanding stock, or any associate of any such director, officer or security holder, is a party or has an interest materially adverse to the bank or any of its subsidiaries should also be described.

Item 8. Relationship with independent public accountants. If the solicitation is made on behalf of the bank and relates to an annual meeting of security holders at which directors are to be elected, or financial statements are included pursuant to Item 15, or relates to a meeting at which action is to be taken with respect to the selection or approval of auditors, furnish the following information describing the bank's relationship with its independent public accountants:

(a) The name of the principal accountant selected or being recommended to shareholders for election, approval or ratification for the current year. If no accountant has been selected or recommended, so state and briefly describe the reasons therefor. .

(b) The name of the principal accountant for the fiscal year most recently completed if different from the accountant selected or recommended for the current year or if no accountant has yet been selected or recommended for the current year.

(c) If a change or changes in accountants have taken place since the date of the proxy statement for the most recent annual meeting of shareholders, and if in connection with such change(s) a disagreement between the accountant and bank has been reported on Form F-3 or in the accountant's letter filed as an exhibit thereto, the disagreement shall be described. Prior to submitting the preliminary proxy material to the Board which contains or amends such description, the bank shall furnish the description of the disagreement to any accountant with whom a disagreement has been reported. If that accountant believes that the description of the disagreement is incorrect, or incomplete, he may include a brief statement, ordinarily expected not to exceed 200 words, in the proxy statement presenting his view of the disagreement. This statement shall be submitted to the bank within 10 business days of the date the accountant received the bank's description.

(d) The proxy statement shall indicate whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year are expected to be present at the stockholders' meeting with the opportunity to make a statement if they desire to do so and whether or not such representatives are expected to be available to respond to appropriate questions.

(e) If the bank has an audit or similar committee of the Board of Directors, state the names of the members of the committee. If the Board of Directors has no audit or similar committee, so state.

Item 9. Bonus, profit-sharing, and other remuneration plans. If action is to be taken with respect to any bonus, profit-sharing, or other remuneration plan, furnish the following information:

(a) Describe briefly the material features of the plan, identify each class of persons who will participate therein, indicate the approximate number of persons in each such class and state the basis of such participation.

(b) State separately the amounts which would have been distributable under the plan during the last fiscal year of the bank (1) to directors and officers, and (2) to employees, if the plan had been in effect.

(c) State the name and position with the bank of each person specified in Item 7(a) who will participate in the plan and the amount *each such person* would have received under the plan for the last fiscal year of the bank if the plan had been in effect.

(d) Furnish such information, in addition to that required by this item and Item 7, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit-sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past 5 years, for (i) each director or officer named in answer to Item 7(a) who may participate in the plan to be acted upon; (ii) all directors and officers of the bank as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

(e) If action is to be taken with respect to the selection or approval of auditors, or if it is proposed that particular auditors shall be recommended by any committee to select auditors for whom votes are to be cast, name the auditors and describe briefly any direct financial interest or any material indirect financial interest in the bank or any of its parents or subsidiaries, or any connection during the past 3 years with the bank or any of its parents or subsidiaries in the capacity of promoter, underwriter, voting trustee, director, officer, or employee. If the auditors to be selected are other than those which were engaged as the principal auditors for the bank's most recently filed certified financial statements, briefly summarize the circumstances and conditions surrounding the proposed change of such auditors, and state whether such change was recommended or approved by:

(1) Any audit or similar committee of the Board of Directors, if the bank has such a committee; or

(2) The Board of Directors, if the bank has no such committee.

(f) For the fiscal year most recently completed, describe each professional service provided by the auditor and state the percentage relationship which the aggregate of the fees for all nonaudit services bear to the audit fees, and, except as provided below, state the percentage relationship which the fee for each nonaudit service bears to the audit fees. Indicate whether, before each professional service provided by the principal accountant was rendered, it was approved by, and the possible effect on the independence of the accountant was considered by (1) any audit or similar committee of the board of directors and (2) for any service not approved by an audit or similar committee, the board of directors.

Instructions. 1. For purposes of this subsection, all fees for services provided in connection with the audit function (*e.g.,* reviews of quarterly reports, filings with the Board, and annual reports) may be computed as part of the audit fees. Indicate which services are reflected in the audit fees computation.

2. If the fee for any nonaudit service is less than 3 per cent of the audit fees, the percentage relationship need not be disclosed.

3. Each service should be specifically described. Broad general categories such as "tax matters" or "management advisory services" are not sufficiently specific.

4. Describe the circumstances and give details of any services provided by the bank's independent accountant during the latest fiscal year that were furnished at rates or terms that were not customary.

5. Describe any existing direct or indirect understanding or agreement that places a limit on current or future years' audit fees, including fee arrangements that provide fixed limits on fees that are not subject to reconsideration if unexpected issues involving accounting or auditing are encountered. Disclosure of fee estimates is not required.

(d) Furnish such information, in addition to that required by this item and Item 7, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past 5 years, for (i) each director or officer named in answer to Item 7(a) who may participate in the plan to be acted upon; (ii) all present directors and officers of the bank as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

(e) If the plan to be acted upon can be amended otherwise than by a vote of stockholders to increase the cost thereof to the bank or alter the allocation of the benefits as between the groups specified in (b)(3), state the nature of the amendments which can be so made.

(f) If action is to be taken with respect to the amendment or modification of an existing plan, this item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

Instructions. 1. The information called for by paragraph (b)(3) or (c)(2) need not be given as to payments made on an actuarial basis pursuant to any group pension plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

2. The instructions to Item 9 shall apply to this item.

Item 10. Pension and retirement plans. If action is to be taken with respect to any pension or retirement plan, furnish the following information:

(a) Describe briefly the material features of the plan, identify each class of persons who will be entitled to participate therein, indicate the approximate number of persons in each such class, and state the basis of such participation.

(b) State (1) the approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid, and the estimated annual payments necessary to pay the total amount over such period, (2) the estimated annual payment to be made with respect to current services, and (3) the amount of such annual payments to be made for the benefit of (i) directors and officers, and (ii) employees.

(c) State (1) the name and position with the bank of each person specified in Item 7(a) who will be entitled to participate in the plan, (2) the amount which would have been paid or set aside by the bank and its subsidiaries for the benefit of such person for the last fiscal year of the bank if the plan had been in effect, and (3) the amount of the annual benefits estimated to be payable to such person in the event of retirement at normal retirement date.

(d) Furnish such information, in addition to that required by this item and Item 7, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past 5 years, for (i) each director or officer named in answer to Item 7(a) who may participate in the plan to be acted upon; (ii) all present directors and officers of the bank as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

(e) If the plan to be acted upon can be amended otherwise than by a vote of stockholders to increase the cost thereof to the bank or alter the allocation of the benefits as between the groups specified in (b)(3), state the nature of the amendments which can be so made.

(f) If action is to be taken with respect to the amendment or modification of an existing plan, this item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

Instructions. 1. The information called for by paragraph (b)(3) of (c)(2) need not be given as to payments made on an actuarial basis pursuant to any group pension plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

2. The instructions to Item 9 shall apply to this item.

Item 11. Options, warrants, or rights.

If action is to be taken with respect to the granting, extension or amendment of any options, warrants, or rights to purchase securities of the bank or any subsidiary, furnish the following information:

(a) State (i) the title and amount of securities called for or to be called for by such options, warrants, or rights; (ii) the prices, expiration dates, and any other material conditions upon which the options, warrants, or rights may be exercised; (iii) the consideration received or to be received by the issuer or subsidiary for the granting extension of the options, warrants or rights; (iv) the market value of the securities called for or to be called for by the options, warrants or rights as of the latest practicable date, and (v) in the case of options, the Federal income tax consequences of the issuance and exercise of such options to the recipient and to the bank.

(b) State separately the amount of options, warrants, or rights received or to be received by the following persons, naming each such person; (i) each director or officer named in answer to Item 7(a); (ii) each nominee for election as a director of the bank; (iii) each associate of such directors, officers, or nominees; and (iv) each other person who received or is to receive 5 percent or more of such options, warrants or rights. State also the total amount of such options, warrants, or rights received or to be received by all directors and officers of the bank as a group, without naming them.

(c) Furnish such information, in addition to that required by this item and Item 7, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past 5 years, for (i) each director or officer named in answer to Item 7(a) who may participate in the plan to be acted upon; (ii) all directors and officers of the bank as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

Instructions 1. Paragraphs (b) and (c) do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

2. The Instructions to Item 9 shall apply to paragraph (c) of this item.

3. Include in the answer to paragraph (c) as to each director or officer named in answer to Item 7(a) and as to all directors and officers as a group (i) the amount of securities acquired during the past two years through the exercise of such options, (ii) the amount of securities sold during such period of the same class as those acquired through the exercise of such options, and (iii) the amount of securities subject to all unexercised options held as of the latest practicable date.

Item 12. Authorization or issuance of securities otherwise than for exchange.

If action is to be taken with respect to the authorization or issuance of any securities otherwise than in exchange for outstanding securities of the bank, furnish the following information:

(a) State the title and amount of securities to be authorized or issued.

(b) Furnish a description of the material provisions of the securities such as would be required in a registration statement filed pursuant to this part. If the terms of the securities cannot be stated or estimated with respect to any or all of the securities to be authorized, because no offering thereof is contemplated in the proximate future, and if no further authorization by security holders for the issuance thereof is to be obtained, it should be stated that the terms of the securities to be authorized, including dividend or interest rates, conversion prices, voting rights, redemption prices, maturity dates, and similar matters will be determined by the board of directors of the bank. If the securities are additional shares of common stock of a class outstanding, the description may be omitted except for a statement of the preemptive rights, if any. Where the statutory provisions with respect to preemptive rights are so indefinite or complex that they cannot be stated in summarized form, it will suffice to make a statement in the form of an opinion of counsel as to the existence and extent of such rights.

(c) Describe briefly the transaction in which the securities are to be issued, including a statement as to (1) the nature and approximate amount of consideration received or to be received by the bank, and (2) the approximate amount devoted to each purpose so far as determinable, for which the net proceeds have been or are to be used. If it is impracticable to describe the transaction in which the securities are to be issued, indicate the purpose of the authorization of the securities, and state (i) whether further authorization for the issuance of the securities by a vote of security holders will be solicited prior to such issuance, and (ii) whether present security holders will have preemptive rights to purchase such securities.

(d) If the securities are to be issued otherwise than in a general public offering for cash, state the reasons for the proposed authorization or issuance and the general effect thereof upon the rights of existing security holders.

Item 13. Modification or exchange of securities.

If action is to be taken with respect to the modification of any class of securities of the bank, or the issuance or authorization for issuance of securities of the bank in exchange for outstanding securities of the bank, furnish the following information:

(a) If outstanding securities are to be modified, state the title and amount thereof. If securities are to be issued in exchange for outstanding securities, state the title and amount of securities to be so issued, the title and amount of outstanding securities to be exchanged therefore, and the basis of the exchange.

(b) Describe any material differences between the outstanding securities and the modified or new securities with respect to any of the matters concerning which information would be required in the description of the securities in a registration statement filed pursuant to this part.

(c) State the reasons for the proposed modification or exchange and the general effect thereof upon the rights of existing security holders.

(d) Furnish a brief statement as to arrears in dividends or as to defaults in principal or interest with respect to the outstanding securities which are to be modified or exchanged and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(e) Outline briefly any other material features of the proposed modification or exchange.

(f) The instruction to Item 9 shall apply to this item.

Instruction. If the existing security is presently listed and registered on a national securities exchange, state whether it is intended to apply for listing and registration of the new or reclassified security on such exchange or any other exchange. If it is not intended to make such application, state the effect of the termination of such listing and registration.

Item 14. Mergers, consolidations, acquisitions, and similar matters.

If action is to be taken with respect to any plan for (i) the merger or consolidation of the bank into or with any other person, or of any other person into or with the bank, (ii) the acquisition by the bank or any of its subsidiaries of securities of another bank, (iii) the acquisition by the bank of any other going business or of the assets thereof, (iv) the sale or other transfer of all or any substantial part of the assets of the bank, or (v) the voluntary liquidation or dissolution of the bank:

(a) Outline briefly the material features of the plan. State the reasons therefore and the general effect thereof upon the interests of existing security holders. If the plan is set forth in a written document, file three copies thereof with the Board when preliminary copies of the Statement are filed pursuant to § 206.5(f).

(b) Furnish the following information as to the bank and each person which is to be merged into the bank, or into or with which the bank is to be merged or consolidated, or the business or assets of which are to be acquired, or which is the issuer of securities to be acquired by the bank or any of its subsidiaries in exchange for all or a substantial part of its assets, or to be acquired by security holders of the bank.

(1) A brief description of the business and property of each such person in substantially the manner required by Items 3 and 5.

(2) A brief statement as to dividends in arrears, defaults in principal or interest with respect to any securities of the bank or of such person, and as to the effect of the plan thereon and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(3) Such information with respect to the proposed management of the surviving bank as would be required by Items 6 and 7 of this Form F-5. Information concerning remuneration of management may be projected for the current year based on remuneration actually paid or accrued by each of the constituent persons during the last calendar year. If significantly different, proposed compensation arrangements should be described.

(4) A tabular presentation of the existing and pro forma capitalization.

(5) In columnar form, for each of the last five fiscal years, a historical summary of earnings. Such summary is to be concluded by indicating per share amounts of income before securities gains (losses), net income, and dividends declared for each period reported. (Extraordinary items, if any, should be appropriately reported and per share amounts of securities gains (losses) should be included.)

(6) In columnar form, for each of the last five fiscal years, a combined pro forma summary of earnings, as appropriate in the circumstances, similar in structure to the historical summary of earnings. If the transaction established a new basis of accounting for assets of any of the persons included therein, the pro forma summary of earnings shall be furnished only for the most recent fiscal year and interim period and shall reflect appropriate pro forma adjustments resulting from such new basis of accounting.

(7) A tabular presentation of comparative per share data of the constituent banks or other persons pertaining to:

(A) (i) Income before securities gains (losses), (ii) net income, and (iii) dividends declared, for each of the last three fiscal years; and

(B) Book value per share, at the date of the balance sheets included in the Statement.

The comparative per share data shall be presented on a historical and pro forma basis (except dividends which are to be furnished on historical basis only) and equated to a common basis in exchange transactions.

(8) To the extent material for the exercise of prudent judgment, the historical and pro forma earnings data specified in (5), (6), and (7) above for the latest available interim period of the current and prior fiscal years.

Instructions. 1. Historical statements of income in their entirety, as required by Item 15, may be furnished in lieu of the summary of earnings specified in paragraph (5). If summary earnings information is presented, include, as a minimum, operating revenues, operating expenses, income before income taxes and security gains (losses), and net income. The summary shall reflect retroactive adjustments of any material items affecting the comparability of the results.

2. In connection with any interim period or periods between the end of the last fiscal year and the balance sheet date, and any comparable prior period, a statement shall be made that all adjustments necessary to a fair statement of the results for such interim period or periods between the end of the last fiscal year and the balance sheet date, and any comparable prior period, a statement shall be made that all adjustments necessary to a fair statement of the results for such interim period or periods have been included, and results of the interim period for the current year are not necessarily indicative of results for the entire year. In addition, there shall be furnished in such cases, as supplemental information but not as a part of the proxy statement, a letter describing in detail the nature and amount of any adjustments, other than normal recurring accruals, entering into the determination of the results shown.

3. The information required by this Item 14(b) is required in a statement of the "acquiring" or "surviving" bank only where a "significant" merger or acquisition is to be voted upon. For purposes of this item, the term "significant" merger or acquisition shall mean a transaction where either (1) the net book value of assets to be acquired or the amount to be paid therefor exceed 5 percent of the equity capital accounts of the acquiring bank, or (2) in an exchange transaction, the number of shares to be issued exceeds 5 percent of the outstanding shares of the acquiring bank, or (3) gross operating revenues for the last fiscal year of the person to be acquired exceeded 5 percent of the gross operating revenues for the last fiscal year of the acquiring bank, or (4) "income (loss) before income taxes and securities gains or losses" amounts to 5 percent or more of the "income (loss) before income taxes and securities gains or losses" of the acquiring bank. If less than a "significant" merger acquisition is to be voted upon, such information need only be included to the extent necessary for the exercise of prudent judgment with respect thereto.

(c) As to each class of securities of the bank, or of any person specified in paragraph (b), which is admitted to dealing on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the plan, state the high and low sale prices (or, in the absence of trading in a particular period, the range of the bid and asked prices) for each quarterly period within two years. This information may be omitted if the plan involves merely the voluntary liquidation or dissolution of the bank.

Item 15. Financial statements.

(a) If action is to be taken with respect to any matter specified in Items 12, 13, or 14 above, furnish verified financial statements of the bank and its subsidiaries such as would be required in a registration statement filed pursuant to this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. All schedules, except Schedules I, II, and VII may be omitted.

(b) If action is to be taken with respect to any matter specified in Item 14(b), furnish for each person specified therein, other than the bank, financial statements such as would be required in a registration statement filed pursuant to this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. However, the following may be omitted: (1) All schedules, except Schedules I, II, and VII; and (2) statements for subsidiary, all of the stock of which is owned by the bank, that is included in the consolidated statement of the bank and its subsidiaries. Such statements shall be verified, if practicable.

(c) Notwithstanding paragraphs (a) and (b) above, any or all of such financial statements which are not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted. Such financial statements are deemed material to the exercise of prudent judgment in the usual case involving the authorization or issuance of any material amount of senior securities, but are not deemed material in cases involving the authorization or issuance of common stock, otherwise than in an exchange, merger, consolidation, acquisition, or similar transaction.

(d) The Statement may incorporate by reference any financial statements contained in an annual report sent to security holders pursuant to § 206.5(c) with respect to the same meeting as that to which the Statement relates, provided such financial statements substantially meet the requirements of this item.

Item 16. Acquisition or disposition of property.

If action is to be taken with respect to the acquisition or disposition of any property furnish the following information:

(a) Describe briefly the general character and location of the property.

(b) State the nature and amount of consideration to be paid or received by the issuer or any subsidiary. To the extent practicable, outline briefly the facts bearing upon the question of the fairness of the consideration.

(c) State the name and address of the transferer or transferee, as the case may be, and the nature of any material relationship of such person to the issuer or any affiliate of the issuer.

(d) Outline briefly any other material features of the contract or transaction.

Item 17. Restatement of accounts.

If action is to be taken with respect to the restatement of any asset, capital, or surplus account of the issuer, furnish the following information:

(a) State the nature of the restatement and the date as of which it is to be effective.

(b) Outline briefly the reasons for the restatement and for the selection of the particular effective date.

(c) State the nature and amount of each account (including any reserve accounts) affected by the restatement and the effect of the restatement thereof. Tabular presentation of the amounts shall be made when appropriate, particularly in the case of recapitalizations.

(d) To the extent practicable, state whether and the extent, if any, to which, the restatement will, as of the date thereof, alter the amount available for distribution to the holders of equity securities.

Item 18. Action with respect to reports.

If action is to be taken with respect to any report of the bank or of its directors, officers, or committees or any minutes of a meeting of its security holders, furnish the following information:

(a) State whether or not such action is to constitute approval or disapproval of any of the matters referred to in such reports of minutes.

(b) Identify each of such matters which it is intended will be approved or disapproved, and furnish the information required by the appropriate item or items of this schedule with respect to each such matter.

Item 19. Matters not required to be submitted.

If action is to be taken with respect to any matter which is not required to be submitted to a vote of security holders, state the nature of such matter, the reasons for submitting it to a vote of security holders and what action is intended to be taken by the management in the event of a negative vote on the matter by the security holders.

Item 20. Amendment of charter, by-laws, or other documents.

If action is to be taken with respect to any amendment of the bank's charter, by-laws, or other documents as to which information is not required above, state briefly the reasons for and general effect of such amendment.

Instruction. Where the matter to be acted upon is the classification of directors, state whether vacancies which occur during the year may be filled by the board of directors to serve only until this next annual meeting or may be so filled for the remainder of the full term.

Item 21. Other proposed action.

If action is to be taken with respect to any matter not specifically referred to above, describe briefly the substance of each such matter in substantially the same degree of detail as is required by Items 5 to 18, inclusive, above.

Item 22. Vote required for approval.

As to each matter which is to be submitted to a vote of security holders, other than elections to office or the selection or approval of auditors, state the vote required for its approval.

[40 FR 50457, Oct. 30, 1975; 40 FR 52843, Nov. 13, 1975, as amended at 43 FR 60559, Dec. 28, 1978; 44 FR 67968, Nov. 28, 1979; 46 FR 11249, Feb. 6, 1981]

§ 206.52 Form for statement in election contests (Form F-6).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FORM F-6

STATEMENT IN ELECTION CONTEST

GENERAL INSTRUCTIONS

The statement shall contain the number and captions of all items, but the text of the items may be omitted. If an item is inapplicable or the answer is in the negative, so state. The information called for by Items 2(a) and 3(a) or a fair summary thereof is required to be included in all preliminary soliciting material by § 206.5(l) of this part.

Item 1. Bank.

State the name and address of the bank.

Item 2. Identity and background of participant.

(a) State the following:

(1) Your name and business address.

(2) Your present principal occupation or employment and the name, principal business, and address of any corporation or other organization in which such employment is carried on.

(b) State the following:

(1) Your residence address.

(2) Information as to all material occupations, positions, offices, or employments during the last ten years, giving starting and ending dates of each and the name, principal business, and address of any business corporation or other business organization in which each such occupation, position, office, or employment was carried on.

(c) State whether or not you are or have been a participant in any other proxy contest involving the bank or other corporations within the past ten years. If so, identify the principals, the subject matter and your relationship to the parties and the outcome.

(d) State whether or not, during the past 10 years, you have been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case. A negative answer to this sub-item need not be included in the Statement or other proxy soliciting material.

Item 3. Interests in securities of the bank.

(a) State the amount of each class of securities of the bank that you own beneficially, directly, or indirectly.

(b) State the amount of each class of securities of the bank that you own of record but not beneficially.

(c) State with respect to the securities specified in (a) and (b) the amounts acquired within the past two years, the dates of acquisition and the amounts acquired on each date.

(d) If any part of the purchase price or market value of any of the shares specified in paragraph (c) is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities, so state and indicate the amount of the indebtedness as of the latest practicable date. If such funds were borrowed or obtained otherwise than pursuant to a margin account or bank loan in the regular course of business of a bank, broker, or dealer, briefly describe the transactions, and state the names of the parties.

(e) State whether or not you are a party to any contracts, arrangements or understandings with any person with respect to any securities of the bank, including but not limited to joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. If so, name the persons with whom such contracts, arrangements, or understandings exist and give the details thereof.

(f) State the amount of securities of the bank owned beneficially, directly or indirectly, by each of your associates and the name and address of each such associate.

(g) State the amount of each class of securities of any parent or subsidiary of the bank which you own beneficially, directly or indirectly.

Item 4. Further matters.

(a) Describe the time and circumstances under which you became a participant in the solicitation and state the nature and extent of your activities or proposed activities as a participant.

(b) Furnish for your self and your associates the information required by Item 7(f) of Form F-5.

(c) State whether or not you or any of your associates have any arrangement or understanding with any person (1) with respect to any future employment by the bank or its affiliates; or (2) with respect to any future transactions to which the bank or any of its affiliates will or may be a party. If so, describe such arrangement or understanding and state the names of the parties thereto.

(d) State the total amount contributed and proposed to be contributed by you in furtherance of the solicitation, directly or indirectly, if such amount exceeds or will exceed $500 in the aggregate.

Item 5. Signature.

The statement shall be dated and signed in the following manner:

I certify that the statements made in this statement are true, complete, and correct, to the best of my knowledge and belief.

____

(Date)

____

(Signature of participant or authorized representative)

Instruction. If the statement is signed on behalf of a participant by the latter's authorized representative, evidence of the representative's authority to sign on behalf of such participant shall be filed with the statement.

§ 206.61 Form for initial statement of beneficial ownership of equity securities (Form F-7).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FORM F-7

INITIAL STATEMENT OF BENEFICIAL OWNERSHIP OF SECURITIES

(Filed pursuant to section 16(a) of the Securities Exchange Act of 1934)

(1) Name of bank ________________

(2) Name and Business Address of Reporting Person

____

____

(3) Relationship of Reporting Person to Company____________. (see Instruction 5)

(4) Nature of event necessitating this statement:

☐ Assumption of Directorship
☐ Appointed policy making officer
☐ Became 10 percent owner
☐ Newly Registered Bank

(5) Date of Event Requiring Filing of this statement ____________. (see Instruction 6)

(6) If an Amendment give date of statement amended____________.

TABLE I. SECURITIES BENEFICIALLY OWNED

Furnish the information required by the following table as to securities of the company beneficially owned directly or indirectly by the reporting person, including transferable warrants but excluding puts, calls, options and other rights or obligations required to be reported in Table II. (see instruction 7)

(1) Title of securities owned (instruction 9)	(2) Amount owned directly or indirectly (instruction 10)	(3) Nature of beneficial ownership (instruction 11)

TABLE II. PUTS, CALLS, OPTIONS AND OTHER RIGHTS ON OBLIGATIONS

Furnish the information required by the following table as to all puts, calls, options and other rights or obligations (all hereinafter referred to as "options") pursuant to which the reporting person may buy or sell, or be required to buy or sell, securities of the company. However, transferable warrants issued by the company which give the right to buy other securities of the company are to be reported in Table I. (see instruction 7)

(1) Title of securities subject to option (instruction 9)	(2) Nature of option held (instruction 12)	(3) Amount of securities subject to option (instruction 11)	(4) Purchase or sale price of securities subject to option (instruction 13)	(5) Date of expiration of option

Explanation of items in tables:

____
Date of Statement

____
Signature of person reporting

NOTE: If the space provided in either table is insufficient, use a continuation sheet which identifies the table and columns to which it relates.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FORM F-7

INSTRUCTIONS

1. *Person required to file statements.* A statement on this form is required to be filed by every person who, at the time any class of equity securities of a bank becomes registered pursuant to section 12 of the Securities Exchange Act of 1934 (the Act), (i) is directly or indirectly the beneficial owner of more than 10 percent of such class or (ii) is a director or officer of the bank which is the issuer of such securities, and by every person who thereafter becomes such a beneficial owner, director, or officer, the term "officer" means a Chairman of the Board of Directors, Vice Chairman of the Board, Chairman of the Executive Committee, President, Vice President (except as indicated in the next sentence), Cashier, Treasurer, Secretary, Comptroller, and any other person who participates in major policy-making functions of the bank. In some banks (particularly banks with officers bearing titles such as Executive Vice President, Senior Vice President, or First Vice President as well as a number of "Vice Presidents"), some or all "Vice Presidents" do not participate in major policy-making functions, and such persons are not officers for the purpose of this statement.

2. *When statements are to be filed.* Persons who hold any of the relationships specified in Instruction 1 when any class of equity securities of the bank becomes registered pursuant to section 12 of the Act are required to file a statement on this form within 10 days after the date such registration becomes effective. Persons who subsequently assume any of the relationships specified in Instruction 1 are required to file a statement within 10 days after assuming such relationship. Statements are not deemed to have been filed with the Board or an exchange until they have actually been received by the Board or such exchange.

3. *Where and how statements are to be filed.* One signed copy of each statement shall be filed with the Board of Governors of the Federal Reserve System, Washington, DC 20551. One signed copy thereof shall also be filed with each exchange on which any class of equity securities of the bank is listed. However, if such bank has, in accordance with § 206.6(a)(3) of Regulation F, designated a single exchange to receive statements, the statement need only be filed with the Board and the designated exchange.

4. *Separate statement for each bank.* A separate statement shall be filed with respect to the equity securities of each bank.

5. Relationship of reporting person. Indicate clearly the relationship of the reporting person to the bank; for example, "Director", "Director and Vice President", "Beneficial owner of more than 10 percent of the bank's common stock," etc.

6. *Date as of which beneficial ownership is to be given.* The information as to beneficial ownership of securities, including those subject to puts, calls, options and warrants, etc., shall be given as of the date on which the event occurred which requires the filing of a statement on this form. For example, when registration of equity securities of the bank becomes effective pursuant to section 12 of the Act or when the person whose ownership is reported becomes a director or officer of the bank or becomes the beneficial owner of more than 10 percent of a class of registered equity securities of the bank.

7. *Securities to be reported.* Persons specified in Instruction 1 above shall include information as to their beneficial ownership of all classes of equity securities of the bank, even though one or more of such classes may not be registered pursuant to section 12 of the Act. If any person required to file a statement on this form does not own any securities required to be reported, a statement on this form shall be filed to report that fact.

8. *Reporting of Ownership in Certain Cases.* (a) When two or more securities are owned as a unit, such as debentures and transferable warrants to purchase common stock, report each security separately and describe the unit relationship in the space provided for explanation on page 2 of the form. If one or more of the securities comprising the unit is not required to be reported, the other security or securities shall be reported separately and the unit relationship described as indicated above.

(b) In reporting the ownership of a convertible security or a transferable warrant, the number of shares or units subject to the conversion privilege and the conversion or exercise price per share or unit shall be set forth in the explanation space on page 2. Transferable warrants issued by the issuer of the security subject to the warrants shall be reported in Table I (in which case the exercise price and date of expiration of the warrant shall be reported in the explanation space on page 2).

(c) Securities owned indirectly shall be reported on separate lines from those owned directly and also from those owned through a different type of indirect ownership.

9. *Title of equity security.* The statement of the title of an equity security should clearly distinguish it from any securities of other classes issued by the bank.

10. *Nature of ownership of securities—Table I.* (a) In reporting the nature of beneficial ownership of securities in Column 3 of Table I, if the securities are owned directly, so state. If they are owned indirectly, state the nature of such indirect ownership: for example, "By self as trustee for sons", "By wife", "By X Trust", "By Y Corporation", etc. If the securities are owned directly and other securities are owned indirectly, the required information shall be furnished separately for each type of ownership; see Instruction 8(c) above. Securities held as joint tenants, tenants in common, tenants by the entirety or as community property are to be reported as held directly.

(b) Beneficially owned securities held in the name of the reporting person or in the name of a bank, broker or nominee for the account of the reporting person shall be reported as directly owned by him. A person is regarded as the indirect beneficial owner of securities held in the name of another person if by reason of any contract, understanding, relationship, including a family relationship, or arrangement, such person obtains therefrom benefits substantially equivalent to those of ownership. For example, a person may be the indirect beneficial owner of securities held in the name of a spouse, relative or other person if such person may obtain therefrom benefits substantially equivalent to those of ownership. A person may also be the indirect beneficial owner of securities held in the name of a partnership, corporation, trust or other entity if such person or a spouse or relative of such person, individually or collectively, may exercise a controlling influence over the purchase, sale or voting of such securities.

11. *Statement of amount owned.* In stating the amount of equity securities beneficially owned, give the face amount of convertible debt securities or the number of shares of stock or other units of other securities. In the case of equity securities owned indirectly, the entire amount of equity securities owned by the partnership, corporation, trust, or other entity shall be stated. The person whose ownership is reported may, if he so desires, also indicate in a footnote or other appropriate manner the extent of his interest in the partnership, corporation, trust, or other entity.

12. *Puts, Calls, Options and Other Rights—Table II.* The terms "puts" and "calls" in Table II include, in addition to separate puts and calls, any combination of the two, such as spreads, straddles, strips and straps. In reporting the nature of the option in Column 3 of Table II, state whether it represents a right to buy, a right to sell, an obligation to buy or an obligation to sell, the securities subject to the option.

13. *Price at which options may be exercised.* If a warrant is not presently exercisable, state the price at which it will first become exercisable. If a warrant, put, call or option is exercisable at various increasing prices, state the price at which it is presently exercisable.

14. *Inclusion of additional information.* A statement may include any additional information or explanation deemed relevant by the person filing the statement.

15. *Signature.* If the statement is filed for a corporation, partnership, trust, etc., the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement. If the statement is filed for an individual, it shall be signed by him or specifically on his behalf by a person authorized to sign for him. If signed on his behalf by another person, the authority of such person to sign the statement shall be confirmed to the Board in writing as soon as practicable by the individual for whom the statement is filed, unless such a confirmation which is still in effect is on file with the Board.

§ 206.62 Form for statement of changes in beneficial ownership of equity securities (Form F-8).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FORM F-8

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

(Filed pursuant to section 16(a) of the Securities Exchange Act of 1934)

(1) Name of Bank ————————

(2) Name and Business Address of Reporting Person

————————

———————— **(Zip)**

(3) Relationships of Report Person to Company (Inst. 4) ————————

(4) Date of Last Previous Statement

————————

(mo.) (day) (year)

(5) If an Amendment, Give Date of Statement Amended

————————

(day) (year)

(6) Statement for Calendar Month of

————————

(mo.) (year)

TABLE I. SECURITIES BOUGHT, SOLD OR OTHERWISE ACQUIRED OR DISPOSED OF

Furnish the information required by the following table as to securities of the company brought or sold or otherwise acquired or disposed of by the reporting person during the month for which this statement is filed (See instruction 6) and as to securities of the company beneficially owned, directly or indirectly, at the end of the month. However, transactions involving the acquisition of disposition of puts, calls, options or other rights or obligations to buy or sell securities of the company shall be reported in Table II.

Title of securities (instruction 8)	3. Date of transaction (instruction 9)	4. Amount of securities acquired for disposed of (instruction 10)	5. Nature of ownership of securities acquired or disposed of (instruction 11)	6. Character or transaction reported (instruction 12)	7. Purchase or sale price per share or other unit (instruction 13)	8. Amount owned at end of month (instruction 10)	9. Nature of ownership of securities owned at end of month (instruction 11)

TABLE II. PUTS, CALLS, OPTIONS AND OTHER RIGHTS OR OBLIGATIONS

If during the month for which this statement is filed the reporting person acquired or disposed of any put, call, option or other right or obligation (all hereinafter referred to as "options") to buy or sell, or be required to buy or sell, securities of the company, furnish the information required by the following table. (See instruction 5.) However, the acquisition or disposition of transferable warrants issued by the company which give the right to buy securities of the company are to be reported in Table I. Options exempted by Rule 16a-6 need not be reported.

Title of securities subject to option (instruction 8)	3. Date of transaction (instruction 9)	4. Nature of option (instruction 14)	5. Amount of securities subject to option (instruction 10)	6. Character of transaction, if any, reported (instruction 12)	7. Purchase or sale price of securities subject to option (instruction 13)	8. Date of expiration of option

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FORM F-8

INSTRUCTIONS

1. Persons required to file statements. A statement on this form is required to be filed by every person who at any time during any calendar month was (i) directly or indirectly the beneficial owner of more than 10 percent of any class of equity securities of a bank registered pursuant to section 12 of the Securities Exchange Act of 1934 (the Act) or (ii) a director or officer of the bank which is the issuer of such securities, and who during such month had any change in the nature or amount of his beneficial ownership of any class of equity securities of such bank. The term "officer" means a Chairman of the Board of Directors, Vice Chairman of the Board, Chairman of the Executive Committee, President, Vice President (except as indicated in the next sentence), Cashier, Treasurer, Secretary, Comptroller, and any other person who participates in major policy-making functions of the bank. In same banks (particularly banks with officers bearing titles such as Executive Vice President, Senior Vice President, or First Vice President, as well as a number of "Vice Presidents"), some or all "Vice Presidents" do not participate in major policy-making functions, and such persons are not officers for the purpose of this statement.

2. When statements are to be filed. Statements are required to be filed on or before the 10th day after the end of each calendar month in which any change in the nature or amount of beneficial ownership has occurred. Statements are not deemed to have been filed with the Board or an exchange until they have actually been received by the Board or such exchange.

3. Where statements are to be filed. One signed copy of each statement shall be filed with the Board of Governors of the Federal Reserve System, Washington, DC 20551. One signed copy thereof shall also be filed with each exchange on which any class of equity securities of the bank is listed. However, if such bank has, in accordance with § 206.6 (a)(3) of Regulation F, designated a single exchange to receive statements, the statement need only be filed with the Board and the designated exchange.

4. Separate statement for each bank. A separate statement shall be filed with respect to the equity securities of each bank.

5. Relationship of reporting person to bank. Indicate clearly the relationship of the reporting person to the bank; for example, "Director", "Director and Vice Presidnet", "Beneficial owner of more than 10 percent of the bank's common stock", etc.

6. Transactions and holdings to be reported. Persons required to file statements on this form shall include in their statements all changes during the calendar month in their beneficial ownership, and their beneficial ownership at the end of the month, of all classes of equity securities of the bank, even though one or more of such classes may not be registered pursuant to section 12 of the Act.

Every change in beneficial ownership shall be reported even though purchases and sales during the month are equal or the change involves only the nature of beneficial ownership (for example, from direct to indirect ownership or from one type of indirect ownership to another). Beneficial ownership at the end of the month of classes of equity securities of the bank shall be shown even though there has been no reportable change during the month in the ownership of equity securities of a particular class.

7. Reporting of Transactions. (a) When a transaction relates to the acquisition or disposition of two or more securities as a unit, such as debentures and transferable warrants to purchase common stock of the bank, report each security separately and describe the unit relationship in the space provided for explanation on page 2 of the form. If one or more of the securities comprising the unit is not required to be reported, the other security or securities shall be reported separately and the unit relationship described as indicated above.

(b) In reporting the acquisition or disposition of a convertible security or a transferable warrant, the number of shares or units subject to the conversion privilege or warrant and the conversion or exercise price per share or unit shall be set forth in the explanation space on page 2. When a convertible security is converted or a warrant is exercised, the amount of securities acquired as a result of such conversion or exercise shall be reported and, in addition, the disposition of the convertible security or warrant shall be reported as a separate transaction.

(c) Securities owned indirectly shall be reported on separate lines from those owned directly and also from those owned through a different type of indirect ownership.

(d) The acquisition, disposition, exercise, or expiration or cancellation of a put, call, option or other right or obligation to buy or sell securities (all hereinafter referred to as "options") is deemed to effect a change in beneficial ownership of the security to which the option relates and shall be reported in Table II. If the option is exercised, the transaction shall be reported in Table II and the acquisition or disposition of the security subject to the option shall be reported in Table I. Transferable warrants issued by the issuer of the security subject to the warrants shall be reported in Table I (in which case the exercise price and date of expiration of the warrant shall be reported in the explanation space on page 2).

8. *Title of equity security.* The statement of the title of an equity security should clearly distinguish it from any securities of other classes issued by the bank.

9. *Date of transaction.* The exact date (month, date, and year) of each transaction shall be stated opposite the amount involved in the transaction. In the case of market transactions, the trade date shall be given and in the case of stock splits, stock dividends, etc., the record date shall be given.

10. *Statement of amounts of equity securities.* In stating the amount of equity securities acquired, disposed of, or beneficially owned, give the face amount of convertible debt securities or the number of shares of stock or other units of other securities. In the case of equity securities owned indirectly, the entire amount of equity securities involved in the transaction or owned by the partnership, corporation, trust, or other entity shall be stated. The person whose ownership is reported may, if he so desires, also indicate in a footnote or other appropriate manner, the extent of his interests in the transaction or holdings of the partnership, corporation, trust or other entity.

11. *Nature of ownership of securities—Table I.* (a) In reporting the nature of ownership of securities on Columns 5 and 9 of Table I, if the securities are owned directly, so state. If they are owned indirectly, state the nature of such indirect ownership; for example, "By self as trustee for sons", "By wife", "By X Trust", "By Y Corporation" etc. If the securities are owned directly and other securities are owned indirectly, the required information shall be furnished separately for each type of ownership, see Instruction 7(c) above. Securities held as joint tenants, tenants in common, tenants by the entirety or as community property are to be reported as held directly.

(b) Beneficially owned securities held in the name of the reporting person or in the name of a bank, broker or nominee for the account of the reporting person shall be reported as directly owned by him. A person is regarded as the indirect beneficial owner of securities held in the name of another person if by reason of any contract, understanding, relationship, including a family relationship, or arrangement, such person obtains therefrom benefits substantially equivalent to those of ownership. For example, a person may be the indirect beneficial owner of securities held in the name of a Spouse, a relative or other person if such person may obtain therefrom benefits substantially equivalent to those of ownership.

A person may also be the indirect beneficial owner of securities held in the name of a partnership, corporation, trust or other entity if such person or a spouse or relative of such person, individually or collectively, may exercise a controlling influence over the purchase, sale or voting of such securities.

12. *Character of transaction.* If the transaction in equity securities was with the bank, so state. If it involved the purchase of equity securities through the exercise of warrants or options, so state, give the termination date of the option or warrant, and give the exercise price per share. If any other purchase or sale was effected otherwise than in the open market, that fact shall be indicated. If the transaction was not a purchase or sale, indicate its character; for example, gift or stock dividend, stock split, or other type of pro rata distribution, etc., as the case may be. The foregoing information may be appropriately set forth in the table or under "Remarks" below the table.

13. *Purchase or sale price of securities.* (a) If any transaction reported in Table I involved a purchase or sale of securities for cash or obligation to pay cash, including the exercise of an option, state in Column 7 the purchase price per share or other unit, exclusive of brokerage commissions or other costs of execution. If the transaction was only partly for cash and partly for other consideration, state the amount of cash per share or other unit and the nature of the additional consideration. Column 7 need not be answered for transactions not involving cash.

(b) When two or more securities are purchased or sold as a unit (see Instruction 7(a) above), the purchase or sale, price of the unit shall be stated opposite one of the securities and cross-referred to opposite the other security or securities.

(c) If an option reported in Table II is exercisable at varying increasing prices, state in Column 7 of that table the price at which it is presently exercisable.

14. *Puts, calls, options and other Rights—Table II.*

The terms "put" and "call" on Table II include, in addition to separate puts and calls, any combination of the two, such as spreads, straddles, strips and straps. In reporting the nature of the option in Column 4 of Table II, state whether it represents a right to buy, a right to sell, an obligation to buy or an obligation to sell, the securities subject to the option.

15. *Inclusion of additional information.* A statement may include an additional information or explanation deemed relevant by the person filing the statement.

16. *Signature.* If the statement is filed for a corporation, partnership, trust, etc., the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement. If the

statement is filed for an individual, it shall be signed by him or specifically on his behalf by a person authorized to sign for him. If signed on his behalf by another person, the authority of such person to sign the statement shall be confirmed to the Commission in writing as soon as practicable by the individual for whom the statement is filed, unless such a confirmation which is still in effect is on file with the Commission.

§ 206.65 Form for registration of certain successor issuers pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Washington, D.C. 20511

FORM F-1B

FOR REGISTRATION OF SECURITIES OF CERTAIN SUCCESSOR ISSUERS PURSUANT TO SECTION 12 (b) OR (g) of the Securities Exchange Act of 1934

GENERAL INSTRUCTIONS

A. Rule as to Use of Form F-1B.

This form may be used for registration pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934 ("Act") of securities of an issuer which has no securities so registered but which has succeeded to an issuer which at the time of the succession had securities so registered, or to such an issuer and one or more other persons, subject to the following conditions:

(a) The capital structure and balance sheet of the successor issuer immediately after the succession were substantially the same as those of the single predecessor or, if more than one predecessor, the combined capital structures and balance sheets of all of the predecessors; or

(b) Proxies were solicited pursuant to regulations promulgated by the Board, Federal Deposit Insurance Corporation or Comptroller of the Currency, or other government agency, under section 14 of the Act with respect to the succession from the security holders of the predecessor or, if more than one predecessor, from the security holders of at least one of such predecessors and copies of the proxy statement used in such solicitation are filed as an exhibit to the registration statement on this form;

Provided, however, (1) That this form may be used only if the registration statement is filed within 120 days after the date of the succession, and (2) that this form shall not be used for the registration on a national securities exchange pursuant to section 12(b) of the Act of securities of a successor issuer unless its predecessor or, if more than one predecessor, at least one of its predecessors, had securities listed and registered on the same exchange at the time of the succession.

B. Application of Regulation F.

(a) The Board's Regulation F contains certain general requirements which are applicable to registration on any form. These general requirements should be carefully read and observed in the preparation and filing of registration statements on this form.

(b) Particular attention is directed to § 206.4 which contains general requirements regarding matters such as the kind and size of paper to be used, legibility, information to be given whenever the title of securities is required to be stated, incorporation by reference and the filing of the registration statement. The definitions contained in § 206.2 should be especially noted.

C. Preparation of Registration Statement.

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the registration statement on paper meeting the requirements of § 206.4(t). The registration statement shall contain the item numbers and captions, but the text of the items may be omitted provided the answers thereto are prepared in the manner specified in § 206.4(u).

D. Signature and Filing of Registration Statement.

Eight complete copies of the registration statement, including exhibits and all papers and documents filed as a part thereof, shall be filed with the Board. At least one complete copy shall be filed with each exchange on which registration is applied for. At least one of the copies filed with the Board and one filed with each such exchange shall be manually signed. Unsigned copies shall be conformed.

E. Incorporation by Reference.

If the information called for by any item or items of this form is contained in a proxy statement filed as an exhibit pursuant to General Instruction A(b), such information may be incorporated by reference to such document in answer or partial answer to such item or items.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Washington, D.C. 20551

FORM F-1B

FOR REGISTRATION OF SECURITIES OF CERTAIN SUCCESSOR ISSUERS PURSUANT TO SECTION 12 (b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

Exact name of bank as specified in its charter ______

State or other jurisdiction of incorporation or organization

I.R.S. Employer Identification No.

(Address of principal executive offices)

(Zip Code)

Securities to be registered pursuant to section 12(b) of the Act:

Title of each class to be registered

Name of each exchange on which each class is to be registered

Securities to be registered pursuant to section 12(g) of the Act:

Title of class

Title of class

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 1. General information.

(a) State the date on which the bank was organized, its form of organization, and the State or other jurisdiction under the laws of which it was organized.

(b) State the date on which the bank's fiscal year ends.

Item 2. Transaction of succession.

(a) Name each predecessor which had securities registered pursuant to section 12(b) or (g) of the Act at the time of the succession.

(b) Describe briefly the transaction of succession and state the basis upon which securities of the bank have been or are to be issued in exchange for or otherwise in respect of securities of any predecessor.

Item 3. Securities to be registered.

As to each class of securities to be registered, state the number of shares or the amounts of bonds (1) presently authorized, (2) presently issued and (3) presently issued which are held by bank for the account of others.

Item 4. Capital stock to be registered.

If capital stock is to be registered hereunder, state the title of the class and furnish the following information (See Instruction 1):

(a) Outline briefly (1) dividend rights; (2) voting rights; (3) liquidation rights; (4) preemptive rights; (5) conversion rights; (6) redemption provisions; (7) sinking fund provisions, and (8) liability to further calls or to assessment.

(b) If the rights of the holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(c) Outline briefly any restriction on the repurchase or redemption of shares by the bank while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

Instructions. 1. If a description of the securities comparable to that required here is contained in any other filing with the Board, such description may, subject to § 206.4(q) be incorporated by reference to such other filing in answer to this item. If the securities are to be registered on a national securities exchange and the description has not previously been filed with such exchange, copies of the description shall be filed with copies of the application filed with the exchange.

2. This item requires only a brief summary of the provisions which are pertinent from an investment standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the governing instruments verbatim; only a succinct resume is required.

3. If the rights evidenced by the securities to be registered are materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other document, include such information regarding such limitation or qualification as will enable investors to understand the rights evidenced by the securities to be registered.

Item 5. Debt securities to be registered.

If the securities to be registered hereunder are bonds, debentures or other evidences of indebtedness, outline briefly such of the following as are relevant:

(a) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement.

(b) Provisions with respect to the kind and priority of any lien, securing the issue, together with a brief identification of the principal properties subject to such lien.

(c) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(d) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instruction. Provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property or property taken by eminent domain, the application of insurance moneys, and similar provisions, need not be described.

(e) The name of the trustee and the nature of any material relationship with the bank or any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action, and what indemnification the trustee may require before proceeding to enforce the lien.

(f) The general type of event which constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture.

Instruction: The instructions to Item 4 shall also apply to this Item.

Item 6. Other securities to be registered.

If securities other than those referred to in Items 4 and 5 are to be registered hereunder, outline briefly the rights evidenced thereby. If subscription warrants or rights are to be registered, state the title and amount of securities called for, the period during which and the price at which the warrants or rights are exercisable.

Instruction: The instructions to Item 4 shall also apply to this Item.

Item 7. Financial statements and exhibits.

List below all financial statements and exhibits, if any, required to be filed as a part of the application or statement:

(a) Financial Statements.

(b) Exhibits.

SIGNATURE

Pursuant to the requirements of section 12 of the Securities Exchange Act of 1934, the bank has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

____
(Bank)

Date: —— By ____________________
(Signature)*

*Print the name and title of the signing officer under his signature.

INSTRUCTIONS AS TO FINANCIAL STATEMENTS

(a) No financial statements need be filed if the capital structure and balance sheet of the bank immediately after the succession were substantially the same as those of the predecessor or, if more than one predecessor, the combined capital structures and balance sheets of all of the predecessors.

(b) If paragraph (a) above does not apply, the registration statement shall include any financial statements or schedules, not included in the proxy statement filed as an exhibit, which would be called for by Form F-1 if the securities were to be registered on that form.

INSTRUCTIONS AS TO EXHIBITS

Subject to § 206.4(q) regarding the incorporation of exhibits by reference, the following exhibits shall be filed as a part of the registration statement. Such exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may be referred to by the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for under Item 7.

1. Copies of the plan or agreement, if any pursuant to which the bank's succession has taken place or is to take place, unless the terms of such plan or agreement are substantially contained in a proxy statement filed as an exhibit pursuant to Instruction 2, below.

2. Copies of any proxy statement required to be filed pursuant to General Instruction A(b).

3. Copies of all other exhibits which would be called for by Form F-1 if the securities to be registered hereunder were to be registered on that form.

§ 206.71 Forms for financial statements (Forms F-9, A, B, C, D, and E).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Format F-9 Financial Statements

A. Balance Sheet (Format F-9A)

B. Statement of Income (Format F-9B)

C. Statement of Changes in Equity Capital (Format F-9C)

D. Statement of Changes in Financial Position (Format F-9D)

E. Schedules (Format F-9E)

GENERAL INSTRUCTIONS

1. *Preparation of Financial Statements.*

The formats are intended to serve as guides for preparation of financial statements required to be filed pursuant to this part. The formats are recommended presentations, but financial statements may be filed in such form and order as will best indicate their significance and character. Requirements for inclusion of financial statements in certain other guideline forms required by Regulation F are found in the instructions to such forms.

Requirements set forth in § 206.7 of this part shall be applicable to financial statements filed pursuant to Regulation F. The term, "financial statements," as used in this instruction, includes all required notes to financial statements and all required schedules.

2. *Accrual Accounting.*

Financial statements shall generally be prepared on the basis of accrual accounting whereby all revenues and all expenses shall be recognized during the period earned or incurred regardless of the time received or paid, with certain exceptions: (a) Where the results would be only insignificantly different on a cash basis, or (b) where accrual is not feasible. Statements with respect to the first fiscal year that a bank reports on the accrual basis shall indicate clearly, by footnote or otherwise, the beginning-of-year adjustments, that were necessary and their effect on prior financial statements filed under this part.

3. *Negative Amounts.*

Negative amounts shall be shown in brackets or parantheses and so described in the related caption, columnar heading or a note to the statement or schedule, as appropriate.

4. *Items Not Material.*

If the amount that would otherwise be required to be shown with respect to any items is not material, it need not be separately set forth

5. *Inapplicable Captions and Omission of Unrequired or Inapplicable Financial Statements and Schedules.*

No caption need be shown in any financial statement or schedule if the items and conditions are not present. Financial statements and schedules not required or inapplicable because the required matter is not present need not be filed, but the statements and schedules omitted and the reasons for their omission shall be indicated in the list of financial statements and schedules required by the applicable form.

A. BALANCE SHEET

The Balance Sheet shall be prepared in accordance with the *Instructions* for the Preparation of the Consolidated Report of Condition (FR 2103, FR 2105 or FR 2106, as applicable) except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

NOTE: Banks subject to this part are required to report on the accrual basis of accounting.

The following captions and added *supplemental* instructions shall be observed in the preparation of the Balance Sheet required under this part.

Assets

1. *Cash and due from depository institutions—*

(a) State separately (1) interest bearing deposits in other banks and (2) noninterest bearing deposits and cash. (See Schedule C of FR 2105 or FR 2106.)

2. *U.S. Treasury Securities*

3. *Obligations of other U.S. Government agencies and corporations*

4. *Obligations of States and political subdivisions in the United States*

5. *Other bonds, notes and debentures*

6. *Federal Reserve stock and corporate stock—*

(a) With respect to Items 2, 3, 4, 5 and 6, state parenthetically on the balance sheet or in a note for each category the aggregate amount on the basis of market quotations or fair value of securities at the balance sheet date.

(b) With respect to Items 2, 3, 4, 5 and 6, state in a note the basis by which book value is determined. Bond premium shall be amortized and discount shall be accreted.

(c) With respect to Items 4, 5 and 6, as applicable, state in a note the name of issuer, aggegate book value and aggregate amount on the basis of market quotations or fair value of the securities of any issuer for which the aggregate book value exceeds 10 percent of the equity capital accounts of the bank. Debt securities issued by a State of the United States and its political subdivisions and agencies which are payable from and secured by the same source of revenue or taxing authority shall be considered to be securities of a single issuer. Consideration shall be given to disclosure of risk characteristics of the securities of an issuer and of differences in risk characteristics of different issues of securities of an issuer as may be appropriate.

7. *Trading account securities—*

(a) State in a note whether securities in the trading account are valued at lower of cost or market. If market basis is not used in valuing the trading account securities inventory, furnish the aggregate fair market value at each balance sheet date.

8. *Federal funds sold and securities purchased under agreements to resell*

9. *Loans, (net of unearned income)*
Less: Allowance for possible loan losses
Loans, net—

(a) If the amount exceeds 5 percent of equity capital, state in a note the aggregate amount of loans outstanding to officers, directors and principal security holders and associates. Amounts to be reported shall include loans from the bank or any subsidiary. It shall not be necessary to disclose amounts related to individuals for household, family and other personal expenditures made in the ordinary course of business that (i) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions with other persons, and (ii) did not involve more than normal risk of collectibility or present other unfavorable features.

NOTE: See Format F-9E, Schedule II for reporting requirements of certain individual indebtedness.

10. Lease financing receivables

11. Bank premises, furniture and fixtures and other assets representing bank premises

12. Real estate owned other than bank premises—

(a) State in a note (1) the basis at which carried, (2) the aggregate fair market value of all real estate owned other than bank premises with an explanation of the method of determining such fair market value, and (3) a reconciliation of any valuation allowance account.

13. Investments in unconsolidated subsidiaries and associated companies

14. Customers' liability to this bank on acceptances outstanding

15. Other assets

16. Total Assets

LIABILITIES

17. Deposits

(a) State separately—

(1) Demand deposits in domestic bank offices

(2) Savings deposits in domestic bank offices

(3) Time deposits in domestic bank offices

(4) Deposits in foreign offices

(See Schedules F and FF of FR 2105 or FR 2106, as applicable.)

(b) State in a note the aggregate amount of (1) time certificates of deposit and (2) other time deposits in denominations of $100,000 or more in domestic offices. (See Memoranda Items 1 (b) and (c) of FR 2105 and FR 2106, as applicable.)

18. Federal funds purchased and securities sold under agreements to repurchase—

(a) If the approximate average balance outstanding during the period for any category was more than 30 percent of equity capital accounts, state in a note with respect to each activity category the following:

(1) Weighted average interest rate at balance sheet date.

(2) Maximum amount of borrowings at any month-end during each period for which an end-of-period balance sheet is required.

(3) Approximate average borrowings outstanding during the period.

(4) Approximate weighted average interest rate for such average borrowing outstanding during the period.

19. Interest-bearing demand notes (note balance) issued to the U.S. Treasury

20. Other liabilities for borrowed money—See supplemental instruction to Item 18.

21. Mortgage indebtedness and liability for capitalized leases—

(a) State in a note material terms and conditions of each obligation including (but not limited to) (1) the general character of the debt, (2) the rate of interest, (3) the date of maturity, or if maturing serially, a brief indication of the serial maturities, (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency, (5) a brief indication of priority and (6) the amount outstanding at the balance sheet date.

(b) Furnish in tabular form the combined aggregate amount of maturities and sinking fund requirements for all obligations, each year for the five years following the date of the balance sheet.

(c) If there are any liens on bank premises or other real estate owned by the bank or its consolidated subsidiaries which have not been assumed by the bank or its consolidated subsidiaries, state in a note the amount thereof together with an appropriate explanation.

22. Bank's liability on acceptances executed and outstanding

23. Other liabilities

24. Total liabilities (excluding subordinated notes and debentures)

25. Subordinated notes and debentures—

(a) State in a note material terms and conditions of each obligation including (but not limited to) (1) the general character of the debt, (2) the rate of interest, (3) the date of maturity, or if maturing serially, an indication of serial maturities, (4) if the payment of principal or interest is contingent, and appropriate indication of such contingency, (5) a brief indication of priority and (6) the amount outstanding at the balance sheet date.

(b) Furnish in tabular form the combined aggregate amount of maturities and sinking fund requirements for all obligations, each year for the five years following the date of the balance sheet.

EQUITY CAPITAL

26. Preferred stock—

(a) State for each class of shares the title of issue, the number of shares authorized, issued and outstanding, the par or stated value per share and the capital share liability thereof, and if convertible, the basis of conversion. Show also the dollar amount, if any, of shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom.

(b) State in a note (1) if callable, the date or dates and the amount per share at which such shares are callable, (2) if convertible, the terms of the conversion, (3) any arrears in cumulative dividends per share and in total for each class of shares, and (4) the preferences on involuntary liquidation, if other than the par or stated value. When the excess involved is material, there shall be shown the difference between the aggregate preference on involuntary liquidation and the aggregate par or state value, a statement this difference (plus any arrears in dividends) exceeds the sum of the par or stated value of the junior capital shares, surplus, and undivided profits including reserve for contingencies and other capital reserves if such is the case, and a statement as to the existence (for absence) of any restrictions upon surplus and/or undivided profits growing out of the fact that upon involuntary liquidation the preference of the preferred stock exceeds its par or stated value.

27. Common stock—

(a) State for each class of shares the title of issue, the number of shares authorized, issued and outstanding, the par or stated value per share and the capital share liability thereof. Show also the dollar amount, if any, of shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom.

28. Surplus

29. Undivided profits

30. Reserve for contingencies and other capital reserves

31. Total Equity Capital

32. Total Liabilities and Equity Capital

GENERAL NOTES TO THE BALANCE SHEETS

If present with respect to the bank for which the statement is filed, the following topical information shall be furnished in notes to the balance sheets:

1. Assets subject to Lien.
2. Intercompany profits and losses.
3. Pension and Retirement Plans.
4. Capital Stock Optioned to Officers and Employees.
5. Restrictions that limit the availability of surplus and/or undivided profits for dividend purposes.
6. Contingent liabilities.
7. Standby letters of credit.
8. Defaults.
9. Significant Changes in Bonds, Mortgages, and Similar Debt.
10. Warrants or rights outstanding.

For detailed instructions as to required content of above general notes to the balance sheet, refer to § 206.7(e)(12) of Regulation F.

B. STATEMENT OF INCOME

The Statement of Income shall conform generally to the Consolidated Report of Income (FR 2104 or FR 2107, as applicable) and related instructions thereto, except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities and Exchange Act of 1934, as amended.

NOTE: Banks subject to this Part are required to report on an accrual basis of accounting.

The following captions and added *supplemental* instructions shall be observed in the preparation of the Statement of Income required under this part:

1. Operating Income:
(a) Interest and fees on loans
(b) Interest on balances with despository institutions
(c) Income on Federal funds sold and securities purchased under agreements to resell in domestic offices of the bank and of its Edge and Agreement subsidiaries
(d) Interest on U.S. Treasury securities
(e) Interest on obligations of other U.S. Government agencies and corporations
(f) Interest on obligations of States and other political subdivisions in the U.S.
(g) Interest on other bonds, notes and debentures
(h) Dividends on stock
(i) Income from lease financing
(j) Income from fiduciary activities
(k) Service charges on deposit accounts in domestic offices
(l) Other service charges, commissions and fees
(m) Other operating income
(n) Total Operating Income
2. Operating Expenses:
(a) Salaries and employee benefits
(b) Interest on time certificate of deposits of $100,000 or more issued by domestic offices
(c) Interest on deposits in foreign offices
(d) Interest on other deposits
(e) Expense of Federal funds purchased and securities sold under repurchase agreements in domestic offices of the bank and of its Edge and Agreement subsidiaries
(f)(1) Interest on demand notes (note balances) issued to the U.S. Treasury
(2) Interest on other borrowed money
(g) Interest on subordinated notes and debentures
(h)(1) Occupancy expense of bank premises, Gross
(2) Less-Rental income
(3) Occupancy expense of bank premises, Net
(i) Furniture and equipment expense
(j) Provision for possible loan losses
(k) Other operating expenses
(l) Total Operating Expenses
3. Income (Loss) Before Taxes And Securities Gains (Losses)
4. Applicable Income Taxes
5. Income (Loss) Before Securities Gains (Losses)

6. (a) Securities Gains (Losses), Gross
(b) Applicable Income Taxes
(c) Security Gains (Losses), Net
7. Income (Loss) Before Extraordinary Items And Cumulative Effects of Changes In Accounting Principles
8. Extraordinary Items, Less Applicable Income Tax
9. Cumulative Effects Of Changes In Accounting Principles
10. Net Income (Loss)
11. Earnings (Loss) Per Common Share[1]
(a) Income (Loss) Before Securities Gains (Losses)
(b) Net Income

Earnings per common share. State the per share amounts applicable to common stock (including common stock equivalents) and per share amounts on a fully diluted basis, if applicable. The basis of computation, including the number of shares used, shall be furnished in a note to the financial statements.

GENERAL NOTES TO THE STATEMENT OF INCOME

If present with respect to the bank for which the statement is filed, the following topical information shall be furnished in notes to the Statement of Income.

1. Intercompany profits and losses
2. Depreciation and amortization
3. Bonus, profit sharing, and other similar plans
4. Income tax expense
5. Interest capitalized
6. Disagreements on accounting and financial matters
7. Disclosure of selected quarterly financial data in notes to financial statements—

For detailed instructions as to required content of above general notes to the statement of income, refer to § 206.7(e)(13) of Regulation F.

C. STATEMENT OF CHANGES IN EQUITY CAPITAL

The format and content of the Statement of Changes in Equity Capital shall conform generally to Section B of the Consolidated Report of Income (FR 2104 and FR 2107) and related instructions thereto except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

The following supplemental instructions shall be observed in preparation of the Statement of Changes in Equity Capital required under this part.

Reconcile the various equity capital accounts individually as follows:

1. Balance end of previous year
2. Prior Period Adjustments [18]

(a) Cumulative effect type changes in accounting principles shall be reported under Item 9, of the Statement of Income.

3. Adjusted balance end of previous year
4. Net income (loss)
5. Sale, conversion, acquisition, or retirement of capital net:
(a) Transactions with own holding company or affiliates
(b) Other
6. Changes incident to mergers and absorptions, net
7. LESS: Cash dividends declared on common stock
8. LESS: Cash dividends declared on preferred stock
9. Stock dividend issued
10. Other increases (decreases) [18]
11. Balance end of period

D. STATEMENT OF CHANGES IN FINANCIAL POSITION

Sources of Funds
Operations:
Net Income
Charges (Credits) to Income not affecting Funds:
Total Funds provided by Operations
Equity Funds—Proceeds
Subordinated Notes and Debentures—Sale Proceeds
Increase (Decrease) in Liabilities:[19]
Total
Applications of Funds
Payment of Dividends
Purchase of Property and Equipment
Increase (Decrease) in Assets:[19]
Total

E. SCHEDULES

[Schedules I—U.S. Treasury Securities, Obligations of Other U.S. Government Agencies and Corporations, Obligations of States and Political Subdivisions, and Other Bonds, Notes and Debentures]

Type and maturity grouping	Book value[1]	Market value[2]
U.S. Treasury securities:		
Within 1 year		
After 1 but within 5 years		
After 5 but within 10 years		
After 10 years		
Total U.S. Treasury securities		

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[1] If amounts are entered for Item 8 and/or 9, per share amounts shall be stated separately for Items 5, 8 and/or 9, and 10.

[18] State separately any material amounts, indicating clearly the nature of the transaction of which the item arose.

[19] Sources and applications of funds items shall be shown separately by amounts when they exceed 5 percent of the average of total funds provided during the respective reported periods.

E. SCHEDULES—Continued

[Schedules I—U.S. Treasury Securities, Obligations of Other U.S. Government Agencies and Corporations, Obligations of States and Political Subdivisions, and Other Bonds, Notes and Debentures]

Type and maturity grouping	Book value [1]	Market value [2]
Obligations of other U.S. Government agencies and corporations:		
Within 1 year		
After 1 but within 5 years		
After 5 but within 10 years		
After 10 years		
Total securities of other U.S. Government agencies and corporations		
Obligations of States and political subdivisions: [3]		
Within 1 year		
After 1 but within 5 years		
After 5 but within 10 years		
After 10 years		
Total obligations of States and political subdivisions		
Other bonds, notes and debentures [4]		

[1] State briefly in a footnote the basis for determining the amounts in this column.

[2] If market value is determined on any basis other than market quotations at balance sheet date, explain.

[3] Include obligations of the States of the United States and their political subdivisions, agencies, and instrumentalities; also obligations of territorial and insular possessions of the United States. Do not include obligations of foreign states.

[4] State in a footnote the aggregate (a) book value and (b) market value of securities that are less than "investment grade".

Note: See Schedule B of FR 2100, FR 2105, or FR 2106, as applicable.

SCHEDULE II—LOANS TO OFFICERS, DIRECTORS, PRINCIPAL SECURITY HOLDERS, AND ANY ASSOCIATES OF THE FOREGOING PERSONS

Col. A—Name of borrower [2]	Col. B—Balance at beginning of period [1]	Col. C—Additions	Col. D—Deductions		Col. E—Balance at end of period
			(1) Amounts collected [3]	(2) Amounts charged off	

[1] Provide information if at any time during the period for which related income statements are required to be filed, loans to a specified person and associates exceeded 2½% of equity capital of the bank or $500,000, whichever is less.

It shall not be necessary to include amount of loans related to individuals for household, family and other personal expenditures made in the ordinary course of business as defined in item 9(a) of Format F-9A, Balance Sheet.

Loans to directors (and any associates) who are neither officers nor principal security holders may be stated in the aggregate. The number of directors for whom loans are stated in the aggregate shall be indicated in Column A.

[2] State in a note hereto pertinent information such as the maturity date, interest rate, terms of repayment and collateral, if any, of loans made to the specified persons named in Column A as of the date of the most recent balance sheet being filed.

[3] If collection was other than cash, explain.

SCHEDULE III—LOANS

Type	Book value
Loans in domestic offices:	
Real estate loans:	
Insured or guaranteed by the U.S. Government or its agencies	$
Other	
Loans to financial institutions	
Loans for purchasing or carrying securities (secured or unsecured)	
Loans to finance agricultural production and other loans to farmers	
Commercial and industrial loans	
Loans to individuals for household, family and other personal expenditures	
All other loans (including overdrafts)	
Loans in foreign offices	
Total loans, gross	
Less: Unearned income on loans	
Total loans (excluding unearned income)	

NOTE: See Schedule A of FR 2103, FR 2105 or FR 2106, as applicable.

SCHEDULE IV—BANK PREMISES AND EQUIPMENT

Classification	Col. A—Gross book value [1]	Col. B—Accumulated depreciation and amortization [2]	Col. C—Amount at which carried on balance sheet
Bank premises (including land dollars)	$	$	$
Equipment			
Leasehold improvements			
Total			

[1] State the basis of determining the amounts in column A.

[2] The nature and amount of significant additions (other than provisions for depreciation and amortization) and deductions shall be stated in an explanatory footnote.

SCHEDULE V—INVESTMENTS IN INCOME FROM DIVIDENDS, AND EQUITY IN EARNINGS OR LOSSES OF SUBSIDIARIES AND ASSOCIATED COMPANIES

Name of issuer [1]	Col. A—Percent of voting stock owned	Col. B—Total investment	Col. C—Equity in underlying net assets at balance sheet date [2]	Col. D—Amount of dividends [3]	Col. E—Bank's proportionate part of earnings or loss for the period
Totals		$	$	$	$

[1] Group separately securities of (a) subsidiaries consolidated, (b) subsidiaries not consolidated, and (c) associated companies. Show shares, bonds, notes and advances separately in each case.

[2] Equity shall include advances and other obligations reported in column B to the extent recoverable.

[3] State as to any dividends other than cash the basis on which they have been reported as income. If any such dividend received has been credited to income in an amount differing from that charged to surplus and/or undivided profits by the disbursing subsidiary, state the amount of such difference and explain.

SCHEDULE VI—ALLOWANCE FOR POSSIBLE LOAN LOSSES

	Amount
Balance end of previous period	$
Recoveries credited to allowance	
Changes incident to mergers and absorptions [1]	
Provisions for possible loan losses	
Less: Losses charged to allowance	
Foreign currency translation adjustment	
Balance end of period [2]	

[1] Describe briefly in a footnote any such addition.

[2] State in a footnote (1) the amount deducted for Federal income tax purposes, (2) the maximum amount that could have been deducted for Federal income tax purposes, and (3) the balance of the allowance at the end of the period as reported for Federal income tax purposes.

NOTE: See Schedule C of FR 2104 or FR 2107, as applicable.

[45 FR 65189, Oct. 2, 1980]

§ 206.81 Form for statement to be filed pursuant to section 13(d)(4) of the Securities and Exchange Act of 1934 (Form F-12)

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Form F-12—Solicitation/Recommendation Statement Pursuant to section 14(d)(4) of the Securities Exchange Act of 1934

(Amendment No.)

(Name of Subject Bank)

(Name of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, address and telephone number of person authorized to receive notice and communications on behalf of the person(s) filing statement)

Instructions: Six copies of this statement including all exhibits, should be filed with the Board.

General Instructions: A. The items numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative so state.

(B) Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Board for all purposes of the Act.

Item 1. Security and Subject Company. State the title of the class of equity. Securities to which this statement relates and the name and the address of the principal executive offices of the subject bank.

Item 2. Tender Offer of the Bidder. Identify the tender offer to which this statement relates, the name of the bidder and the address of its principal executive offices or, if the bidder is a natural person, the bidder's residence or business address (which may be based on the bidder's Form F-13 (12 CFR 206.82) filed with the Board).

Item 3. Identity and Background. (a) State the name and business address of the person filing this statement.

(b) If material, describe any contract, agreeement, arrangement or understanding and any actual or potential conflict of interest between the person filing this statement or its affiliates and: (1) The subject bank, its executive officers, directors or affiliates; or (2) the bidder, its executive officers, directors or affiliates.

Instruction: If the person filing this statement is the subject bank and if the materiality requirement of Item 3(b) if applicable to any contract, agreement, arrangement or understanding between the subject bank or any affiliate of the subject bank and any executive officer or director of the subject bank, it shall not be necessary to include a description thereof in this statement, or in any solicitation or recommendation published, sent or given to security holders if such information, or information which does not differ materially from such information, has been disclosed in any proxy statement, report or other communication sent within one year of the filing date of this statement by the subject bank to the then holders of the securities and has been filed with the Board: *Provided,* That this statement and the solicitation or recommendation published, sent or given to security holders shall contain specific reference to such proxy statement, report or other communication and that a copy of the pertinent portion(s) thereof is filed as an exhibit to this statement.

Item 4. The Solicitation or Recommendation. (a) State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the person filing this statement is advising security holders of the securities being sought by the bidder to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, furnish a description of such other action being recommended. If the person filing this statement is the subject bank and a recommendation is not being made, state whether the subject bank is either expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

(b) State the reason(s) for the position (including the inability to take a position) stated in (a) of this Item.

Instruction: Conclusory statement such as "The tender offer is in the best interest of shareholders," will not be considered sufficient disclosure in response to item 4(b).

Item 5. Persons Retained, Employed or To Be Compensated. Identify any person or class of persons employed, retained or to be compensated by the person filing this statement or by any person on its behalf, to make solicitations or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 6. Recent Transactions and Intent With Respect To Securities. (a) Describe any transaction in the securities referred to in Item 1 which was affected during the past 60 days by the person(s) named in response to Item 3(a) and by any executive officer, director, affiliate or subsidiary of such person(s).

(b) To the extent known by the person filing this statement, state whether the persons referred to in Item 6(a) presently intend to tender to the bidder, sell or hold securities of the class of securities being sought by the bidder which are held of record or beneficially owned by such person.

Item 7. Certain Negotiations and Transactions by the Subject Bank. (a) If the person filing this statement is the subject bank, state whether or not any negotiation is being undertaken or is underway by the subject bank in response to the tender offer which relates to or would result in:

(1) An extraordinary transaction such as a merger or reorganization, involving the sub-

ject bank, or any subsidiary of the subject bank;

(2) A purchase, sale or transfer of a material amount of assets by the subject bank or any subsidiary of the subject bank;

(3) A tender offer for or other acquisition of securities by or of the subject bank; or

(4) Any material change in the present capitalization or dividend policy of the subject bank.

Instruction. If no agreement in principle has yet been reached, the possible terms of any transaction or the parties thereto need not be disclosed if in the opinion of the Board of Directors of the subject bank such disclosure would jeopardize continuation of such negotiations. In such event, disclosure that negotiations are being undertaken or are underway and are in the preliminary stages will be sufficient.

(b) Describe any transaction, board resolution, agreement in principle, or a signed contract in response to the tender offer, other than one described pursuant to Item 3(b) of this statement, which relates to or would result in one or more of the matters referred to in Item 7(a) (1), (2), (3) or (4).

Item 8. Additional Information To Be Furnished. Furnish such additional information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

Item 9. Material To Be Filed as Exhibits. Furnish a copy of: (a) Any written solicitation or recommendation which is published or sent or given to security holders in connection with the solicitation or recommendation referred to in Item 4.

(b) If any oral solicitation or recommendation to security holders is to be made by or on behalf of the person filing this statement, any written instruction, or other material which is furnished to the persons making the actual oral solicitation or recommendation for their use, directly or indirectly, in connection with the solicitation or recommendation.

(c) Any contract, agreement, arrangement or understanding described in Item 3(b) or the pertinent portion(s) of any proxy statement, report or other communication referred to in Item 3(b).

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

____

(Date)

____

(Signature)

____

(Name and Title)

Instruction. The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer of a corporation or bank or a general partner of a partnership), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

[46 FR 11250, Feb. 6, 1981]

§ 206.82 Statement to be filed pursuant to section 14(d)(1) of the Securities Exchange Act of 1934 (Form F-13).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FORM F-13

Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934, (Amendment No. ——), (Name of Subject Bank), ———— (Bidder), ———— (Title of Class of Securities), ———— (Name, address and telephone number of person authorized to receive notices and communications on behalf of bidder).

Instructions 1. Eight copies of this statement, including all exhibits, and two additional copies of this statement, including only the exhibits described in Item 11(a) of this statement, should be filed with the Board.

2. No fee is required to be paid to the Board in connection with the filing of the initial statement or amendments thereto.

General Instructions. A. The item numbers and captions of the items shall be included but the answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or subitem of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Comptroller for all purposes of the Act.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Items 2-7, inclusive, shall be given with respect to: (i) Each partner of such partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a bank or corporation, or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a bank or corporation, the information called for by the above mentioned items shall be given with respect to: (a) Each Executive officer and director of such bank or corporation; (b) each person controlling such bank or corporation; and (c) each executive officer and director of any bank or corporation ultimately in control of such bank or corporation. A response to an item in the statement is required with respect to the bidder and to all other persons referred to in this instruction unless such item specifies to the contrary.

D. Upon termination of the tender offer, the bidder shall promptly file a final amendment to Form F-13 disclosing all material changes in the items of that Form and stating that the tender offer has terminated, the date of such termination and the results of such tender offer.

E. If the bidder, before filing this statement, has filed a Form F-11 with respect to the acquisition of securities of the same class referred to in Item 1(a) of this statement, the bidder shall amend such Form F-11 and may do so by means of this statement and amendments thereto, including the final amendment required to be filed by Instruction D: *Provided*, That the bidder indicates on the cover sheet of this statement that it is amending its Form F-11 by means of this statement.

F. The final amendment required to be filed by Instruction D shall be deemed to satisfy the reporting requirements of section 13(d) of the Act with respect to all securities acquired by the bidder pursuant to the tender offer as reported in such final amendment.

G. For purposes of this statement, the following definitions shall apply:

(i) The term "bidder" means any person on whose behalf a tender offer is made; and

(ii) The term "subject bank" means any bank whose securities are sought by a bidder pursuant to a tender offer.

Item 1. Security and subject bank. (a) State the name of the subject bank and the address of its principal offices;

(b) State the exact title and the number of shares outstanding of the class of equity securities being sought (which may be based upon information contained in the most recently available filing with the Board by the subject bank unless the bidder has reason to believe such information is not current), the exact amount of such securities being sought and the consideration being offered therefor; and

(c) Identify the principal market, if any, in which such securities are traded and state the high and low sales prices for such securities in such principal market (or, in the absence thereof, the range of high and low bid quotations) for each quarterly period during the past two years.

Item 2. Identity and background. If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal office and the information required by (e) and (f) of this Item. If the person filing this statement or any person enumerated in Instruction c is a natural person, provide the information specified in (a) through (g) of this Item with respect to such person(s).

(a) Name;

(b) Residence or business address;

(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment or occupation is conducted;

(d) Material occupations, positions, offices or employments during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which such occupation, position, office or employment was carried on.

Instruction. If a person has held various positions with the same organization, or if a person holds comparable positions with multiple related organizations, each and every position need not be specifically disclosed.

(e) Whether or not, during the last five years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case. Instruction. While a negative answer to this sub-item is required in this schedule, it need not be furnished to security holders.

(f) Whether or not, during the last five years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting activities subject to, Federal or State securities or banking laws or finding any violation of such laws; and, if so, identify and describe such proceeding and summarize the terms of such judgment, decree or final order. Instruction. While a negative answer to this sub-item is required in this schedule, it need not be furnished to security holders.

(g) Citizenship(s).

Item 3. Past contacts, transactions or negotiations with the subject bank. (a) Briefly state the nature and approximate amount (in dollars) of any transaction, other than those described in Item 3(b) of this Form and those in the ordinary course of the bank's business, which has occurred since the commencement of the subject bank's third full fiscal year preceding the date of this schedule, between the person filing this schedule (including those persons enumerated in Instruction C of this schedule) and:

(1) The subject bank or any of its affiliates which are corporations: *Provided, however,* That no disclosure need be made with respect to any transaction if the aggregate amount involved in such transaction was less than 1 percent of the subject bank's consolidated income (which may be based upon information contained in the most recently available filing with the Board by the subject bank, unless the bidder has reason to believe otherwise) (i) for the fiscal year in which such transaction occurred or, (ii) for the portion of the current fiscal year which has occurred, if the transaction occurred in such year; and

(2) The executive officers, directors or affiliates of the subject bank which are not corporations if the aggregate amount involved in such transaction or in a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, exceeds $40,000.

(b) Describe any contacts, negotiations or transactions other than those in the ordinary course of the bank's business which have occurred since the commencement of the subject bank's third full fiscal year preceding the date of this schedule between the bidder or its subsidiaries (including those persons enumerated in Instruction C of this schedule) and the subject bank or its affiliates or any shareholder awning more than 10 percent of the outstanding shares of the subject bank concerning: a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

Item 4. Source and amount of funds or other consideration. (a) State the source and the total amount of funds or other consideration for the purchase of the maximum number of securities for which the tender offer is being made.

(b) If all or any part of such funds or other consideration are or are expected to be, directly or indirectly, borrowed for the purpose of the tender offer:

(1) Provide a summary of each loan agreement or arrangement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions relative to such loan agreement; and

(2) Briefly describe any plans or arrangements to finance or repay such borrowings, or if no such plans or arrangements have been made, make a statement to that effect.

(c) If the source of all or any part of the funds to be used in the tender offer is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act, the name of such bank shall not be made available to the public if the person filing the statement so requests in writing and files such request, naming such bank, with the Secretary of the Board.

(d) If the source of all or any part of the funds to be used in the tender offer is a loan made by a bank as defined by section 3(a)(6) of the Act, indicate whether there exists any agreement, arrangement, or understanding pursuant to which the subject bank maintains or would maintain a correspondent deposit account at such lending bank.

Item 5. Purpose of the tender offer and plans or proposals of the bidder. State the purpose or purposes of the tender offer for the subject bank's securities. Describe any plans or proposals which relate to or would result in:

(a) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the subject bank or any of its subsidiaries;

(b) A sale or transfer or a material amount of assets of the subject bank or any of its subsidiaries;

(c) Any change in the present board of directors or management of the subject bank including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the board;

(d) Any material change in the present capitalization or dividend policy of the subject bank;

(e) Any other material change in the subject bank's corporate structure or business;

(f) Causing a class of securities of the subject bank to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association; or

(g) A class of equity securities of the subject bank becoming eligible for termination of registration pursuant to section 12(g)(4) of the Act.

Item 6. Interest in securities of the subject bank. (a) State the aggregate number and percentage of the class represented by such shares (which may be based on the number of shares outstanding as contained in the most recently available filing with the Board by the subject bank unless the bidder has reason to believe such information is not current), beneficially owned (identifying those shares for which there is a right to acquire) by each person named in Item 2 of this schedule and by each associate and majority-owned subsidiary of such person giving the name and address of any such associate or subsidiary.

(b) Describe any transaction in the class of securities reported on that was effected during the past 60 days by the persons named in response to paragraph (a) of this Item or by any executive officer, director or subsidiary of such person.

Instructions. 1. The description of a transaction required by Item 6(b) shall include, but not necessarily be limited to: (1) The identity of the person covered by Item 6(b) who effected the transaction; (2) the date of the transaction; (3) the amount of securities involved; (4) the price per share; and (5) where and how the transaction was effected.

2. If the information required by Item 6(b) of this Form is available to the bidder at the time this statement is initially filed with the Board pursuant to paragraph (d)(1)(i) of this section, such information should be included in such initial filing. However, if such information is not available to the bidder at the time of such initial filing, it shall be filed with the Board promptly but in no event later than two business days after the date of such filing and, if material, shall be disclosed in a manner reasonably designed to inform security holders. The procedure specified by this instruction is provided for the purpose of maintaining the confidentiality of the tender offer in order to avoid possible misuse of inside information.

Item 7. Contracts, arrangements, understandings or relationships with respect to the subject bank's securities. Describe any contract, arrangement, understanding or relationship (whether or not legally enforceable) between the bidder (including those persons enumerated in Instruction C to this schedule) and any person with respect to any securities of the subject bank (including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any of such securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or the giving or withholding of proxies), naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into and giving the material provisions thereof. Include such information for any of such securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of such securities, except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

Item 8. Persons retained, employed or to be compensated. Identify all persons and classes of persons employed, retained or to be compensated by the bidder, or by any person on the bidder's behalf, to make solicitations or recommendations in connection with the tender offer and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 9. Financial statements of certain bidders. Where the bidder is other than a natural person and the bidder's financial condition is material to a decision by a security holder of the subject company whether to sell, tender or hold securities being sought in the tender offer, furnish current, adequate financial information concerning the bidder *Provided,* That if the bidder is controlled by another entity which is not a natural person and has been formed for the purpose of making the tender offer, furnish current, adequate financial information concerning such parent.

Instructions. 1. The facts and circumstances concerning the tender offer, particularly the terms of the tender offer, may influence a determination as to whether disclosure of financial information is material. However, once the materiality requirement is applicable, the adequacy of the financial information will depend primarily on the nature of the bidder.

In order to provide guidance in making this determination, the following types of financial information will be deemed adequate for purposes of this item for the type of bidder specified: (a) Financial statements prepared in compliance with Form 10 of the Securities and Exchange Commission (17 CFR 249.210) for a domestic bidder which is otherwise eligible to use such form; and (b) financial statements prepared in compliance with Form 20 of the Securities and Exchange Commission (17 CFR 249.220) for a foreign bidder which is otherwise eligible to use such form.

2. The financial statements required by this item need not be audited if such audited financial statements are not available or obtainable without unreasonable cost or expense and a statement is made to that effect disclosing the reasons therefor.

Item 10. Additional information. If material to a decision by a security holder whether to sell, tender or hold securities being sought in the tender offer, furnish information as to the following:

(a) Any present or proposed material contracts, arrangements, understandings or relationships between the bidder or any of its executive officers, directors, controlling persons or subsidiaries and the subject bank or any of its executive officers, directors, controlling persons or subsidiaries (other than any contract, arrangement or understanding required to be disclosed pursuant to Items 3 or 7 of this schedule);

(b) To the extent known by the bidder after reasonable investigation, the applicable regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer;

(c) The applicability of antitrust laws;

(d) The applicability of the margin requirements of section 7 of the Act and the regulations promulgated thereunder;

(e) Any material pending legal proceedings relating to the tender offer including the name and location of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto and a brief summary of the proceedings; and

Instruction. In connection with this subitem, a copy of any document relating to a major development (such as pleadings, an answer, complaint, temporary restraining order, injunction, opinion, judgment or order) in a material pending legal proceeding should be promptly furnished to the Board on a supplemental basis.

(f) Such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

Item 11. Material to be filed as exhibits. Furnish a copy of: (a) Tender offer material which is published, sent or given to security holders by or on behalf of the bidder in connection with the tender offer;

(b) Any loan agreement referred to in Item 4 of this schedule. Instruction. The identity of any bank, other than the subject bank, which is a party to a loan agreement need not be disclosed if the person filing the statement has requested that the identity of such bank not be made available to the public pursuant to Item 4 of this schedule;

(c) Any document setting forth the terms of any contracts, arrangements, understandings or relationships referred to in Item 7 or 10(a) of this schedule;

(d) Any written opinion prepared by legal counsel at the bidder's request and communicated to the bidder pertaining to the tax consequences of the tender offer;

(e) In an exchange offer where securities of the bidder have been or are to be registered under the Securities Act of 1933, the prospectus containing the information required to be included therein by Rule 434b of the Securities and Exchange Commission (17 CFR 230.434b);

(f) If any oral solicitation of security holders is to be made by or on behalf of the bidder, any written instruction, form or other material which is furnished to the persons making the actual oral solicitation for their use, directly or indirectly, in connection with the tender offer.

Signature. After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Signature ______

Name and Title ______

Date ______

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

[43 FR 60559, Dec. 28, 1978; 44 FR 5391, Jan. 26, 1979. Redesignated and amended at 46 FR 11251, Feb. 6, 1981]

INTERPRETATIONS

AUTHORITY: Interpretations issued under 15 U.S.C. 78*l*-n, 78p, 78w.

§ 206.101 Interpretation of definition of "officers."

(a) Section 206.2(o) defines the term "officer" to mean any person who occupies one or more of certain enumerated positions in a member State bank "and any other person who participates in major policy-making functions of the bank." Among the positions so enumerated is that of "Vice President", but it is also provided that a person bearing the title of "Vice President" who does not "participate in major policy-making functions of the bank" is not an officer for the purposes of this Part 206.

(b) When this Part 206 was adopted, an accompanying description in the FEDERAL REGISTER (30 FR 362; January 12, 1965), stated that "an 'officer' of a bank is defined to exclude persons who, regardless of title, do not participate in major policy-making functions." This statement has resulted in some confusion as to the scope of the definition of "officer". In order to clarify the matter, the Board of Governors has made the following interpretation.

(c) All persons holding any position enumerated in § 206.2(o), except those holding a position as "Vice President", are officers for purposes of this Part 206 regardless of whether they participate in major policy-making functions. The second sentence of § 206.2(o), which provides that certain persons are not officers if they do not participate in major policy-making functions, applies only to persons with the title of "Vice President".

[30 FR 6731, May 18, 1965]

§ 206.102 Disclosure of loans to "insiders."

(a) The Board of Governors has recently been asked to clarify its position with respect to disclosure of loans to "insiders"—that is, officers, directors, and persons holding more than 10 percent of the bank's stock—in management proxy statements furnished in accordance with the requirements of §§ 206.5 and 206.51 (Form F-5). This interpretation is also applicable to disclosure of such transactions under comparable provisions relating to registration of bank securities (§ 206.41; Form F-1) under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*).

(b) Item 7(f) of Form F-5 and Item 12 of Form F-1 in effect require a description of any material[1] interest of any insider or any of his "associates"[2] in any material transaction to which the bank was, or is to be, a party. These items contain a number of specific exemptive instructions—for example, no disclosure is required where the only interlock is that a director of a bank is a director and/or officer of another corporation that is a party to the transaction. Generally, these items require disclosure of loans to a corporate borrower only where insiders, individually or with members of their immediate families,[3] own at least 10 percent of the borrower's outstanding stock.

(c) The Board does not regard loans and other extensions of credit by a registrant bank in the ordinary course of its business as "material" for the purposes of this part (and therefore required to be disclosed unless otherwise specifically exempted by the instructions in these Items) if such loans (1) are made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other than insiders, (2) at no time aggregate more than 10 percent of the equity capital accounts of the bank or $10 million, whichever is less, and (3) do not involve more than the normal risk of collectibility or present other unfavorable features.

(d) Item 7(e) of Form F-5 requires disclosure of indebtedness to the bank of each director or officer of the bank and each nominee for election as a director. An instruction to this item specifically excludes indebtedness resulting from transactions in the ordinary course of the bank's business. The effect of this instruction is to exempt the bank from reporting under item 7(e) normal extensions of credit to such persons, of types and amounts customarily made by the bank in the usual course of its operations. However, even if disclosure of indebtedness is not required by item 7(e), consideration must be given to whether it must be reported in the light of the provisions of item 7(f), referred to above.

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[1] "The term 'material', when used to qualify a requirement for furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before buying or selling the security registered." (§ 206.2(n).)

[2] "The term 'associate', when used to indicate a relationship with any person, means (1) any corporation or organization (other than the bank or a majority-owned subsidiary of the bank) of which such person is an officer or partner or is, directly or indirectly, either alone or together with one or more members of his immediate family, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as a trustee or in a similar fiduciary capacity, and (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the bank or any of its parents or subsidiaries." (§ 206.2(d).)

[3] "The term 'immediate family' includes a person's (1) spouse; (2) son, daughter, and descendant of either; (3) father, mother, and ancestor of either; (4) stepson and stepdaughter; and (5) stepfather and stepmother. For the purpose of determining whether any of the foregoing relationships exist, a legally adopted child shall be considered a child by blood." (§ 206.2(k).)

(e) It should also be noted that item 7(e) requires disclosure of any liability to the bank that appears to have arisen under section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) as a result of "insider" transactions in the bank's stock (or other equity security).

[30 FR 15089, Dec. 7, 1965]

§ 206.103 Financial statements to be included in annual reports to security holders.

(a) Since 1966 will generally be the first time that banks subject to the public disclosure requirements of the Securities Exchange Act of 1934 (15 U.S.C. 78) will be soliciting proxies in accordance with such requirements, the Board of Governors directs the attention of registrant banks to § 206.5(c) (Reg. F). It is provided therein that a bank's proxy statement (or the statement that must be distributed where management does not solicit proxies) which relates to an annual meeting of security holders at which directors are to be elected, shall be accompanied or preceded by an annual report to such security holders "containing such financial statements for the last fiscal year as will, in the opinion of the management, adequately reflect the financial position and operations of the bank."

(b) Adherence to the following reporting standards, prescribed in Regulation F, is considered necessary to reflect adequately the financial position and results of operations of registrant banks in such annual reports to security holders:

(1) Financial statements should be prepared on a consolidated basis to the extent required by Regulation F.

(2) A statement of income should be furnished in a form providing for the determination of the "amount transferred to undivided profits" as a result of all activity related to the preceding year.

(3) A statement of changes in capital accounts, including capital reserves, should be included.

(4) Valuation reserves should be reported as reductions of related asset values.

(5) A reconciliation of valuation reserves should be presented, showing material charges and credits.

(c) Section 206.5(c) further provides that—

> The financial statements included in the annual report may omit details or summarize information if such statements, considered as a whole in the light of other information contained in the report and in the light of the financial statements of the bank filed or to be filed with the Board, will not by such procedure omit any material information necessary to a fair presentation or to make the financial statements not misleading under the circumstances. Subject to the foregoing requirements with respect to financial statements, the annual report to security holders may be in any form deemed suitable by the management.

(d) Pursuant to these provisions, the financial statements included in annual reports to security holders should not be inconsistent with the financial reporting prescribed by Regulation F and they should conform in all material respects to the accounting principles stated therein. However, annual reports to security holders need not include the detailed information required in annual reports filed with the Federal Reserve Board on Federal Reserve Form F-2 (§ 206.42).

[30 FR 15286, Dec. 10, 1965]

§ 206.104 Board policy regarding issuer tender offer and going private transactions.

The Board is not proposing to amend Regulation F to conform it to the Securities and Exchange Commission's "issuer tender offer" regulation. The Board must approve any reduction in the amount, or the retirement of any part of a member bank's common or preferred capital stock pursuant to section 9 of the Federal Reserve Act, 12 U.S.C. 324(i) (1970). The Board also notes that issuer tender offers are very rare among member banks. Therefore, instead of adopting substantially similar regulations to Rule 13e-4 and Schedule 13E-101, the Board will withhold its approval to the reduction in the amount or the retirement of any part of a member bank's equity securities registered under section 12 of the Act unless the requirements of rules 13e-4 and 13e-101 are met in all material respects. Also, the Board is not proposing to amend Regulation F to conform it to the Commission's "going private" regulations. The Board notes that its supervisory powers under the Federal Reserve Act make those member bank issuers with classes of equity securities registered pursuant to section 12 subject to more extensive regulatory oversight than most issuers subject to Commission's jurisdiction. Pursuant to section 9 of the Federal Reserve Act, the Board must approve substantially all of the corporate transactions involving member banks subject to Rule 13e-3. Instead of adopting the Commission's "going private" regulations the Board will withhold its approval to any Rule 13e-3 type corporate transaction unless the requirements of rules 13e-3 and 13e-100 are met in all material respects. *See,* 45 FR 71575 (Oct. 29, 1980).

[46 FR 11251, Feb. 6, 1981]

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

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AUTHORITY: Secs. 3, 7, 8, 17 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q and 78w).

SOURCE: Sections 207.1 through 207.7 appear at 48 FR 35071, Aug. 3, 1983, unless otherwise noted.

EDITORIAL NOTE: For FR citations to changes to the List of OTC Margin Stocks, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 207.1 Authority, purpose, and scope.

(a) *Authority.* Regulation G (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C. 78a et seq.).

(b) *Purpose and scope.* This part applies to persons other than banks, brokers or dealers, who extend or maintain credit secured directly or indirectly by margin stock and who are required to register with the Board under § 207.3(a) of this part. Credit extended by such persons is regulated by limiting the loan value of the collateral securing the credit, if the purpose of the credit is to buy or carry margin stock.

§ 207.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section.

(a) "Affiliate" means any person who, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the lender.

(b) "Carrying" credit is credit that enables a customer to maintain, reduce, or retire indebtedness originally incurred to purchase a stock that is currently a margin stock.

(c) "Current market value" of (1) a security means:

(i) If quotations are available, the closing sale price of the security on the preceding business day, as appearing in any regularly published reporting or quotation service; or

(ii) If there is no closing sale price, the lender may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day; or

(iii) If the credit is used to finance the purchase of the security, the total cost of purchase, which may include any commissions charged.

(2) Any other collateral means a value determined by any reasonable method.

(d) "Customer" includes any person or persons acting jointly, to or for whom a lender extends or maintains credit.

(e) "Good faith" with respect to: (1) The loan value of collateral means that amount (not exceeding 100 percent of the current market value of the collateral) which a lender, exercising sound credit judgment, would lend without regard to the customer's other assets held as collateral in connection with unrelated transactions.

(2) Accepting a statement or notice from or on behalf of a customer means that the lender or its duly authorized representative is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to accept the notice or certification without inquiry, investigates and is satisfied that it is truthful.

(f) "Indirectly secured" (1) includes any arrangement with the customer under which:

(i) The customer's right or ability to sell, pledge, or otherwise dispose of margin stock owned by the customer is in any way restricted while the credit remains outstanding; or

(ii) The exercise of such right is or may be cause for accelerating the maturity of the credit.

(2) Does not include such an arrangement if:

(i) After applying the proceeds of the credit, not more than 25 percent of the value of the assets subject to the arrangement, as determined by any reasonable method, are margin securities;

(ii) It is a lending arrangement that permits accelerating the maturity of the credit as a result of a default or renegotiation of another credit to the customer by another creditor that is not an affiliate of the lender;

(iii) The lender holds the margin stock only in the capacity of custodian, depositary, or trustee, or under similar circumstances, and, in good faith, has not relied upon the margin stock as collateral; or

(iv) If the lender, in good faith, has not relied upon the margin stock as collateral in extending or maintaining the credit.

(g) "In the ordinary course of business" means occurring or reasonably expected to occur in carrying out or furthering any business purpose, or in the case of an individual, in the course of any activity for profit or the management or preservation of property.

(h) "Lender" means any person subject to the registration requirements of this part.

(i) "Margin stock" means:

(1) Any equity security registered or having unlisted trading privileges on a national securities exchange;

(2) Any OTC margin stock;

(3) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS Security);

(4) Any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock;

(5) Any warrant or right to subscribe to or purchase a margin stock; or

(6) Any security issued by an investment company registered under sec-

tion 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), other than:

(i) A company licensed under the Small Business Investment Company Act of 1958, as amended (15 U.S.C. 661); or

(ii) A company which has at least 95 percent of its assets continuously invested in exempted securities (as defined in 15 U.S.C. 78c(a)(12)); or

(iii) A company which issues face-amount certificates as defined in 15 U.S.C. 80a-2(a)(15), but only with respect of such securities.

(j) "Maximum loan value" is the percentage of current market value assigned by the Board under § 207.7 of this part to specified types of collateral. The maximum loan value of margin stock is stated as a percentage of current market value. All other collateral has "good faith" loan value except that puts, calls and combinations thereof have no loan value.

(k) "OTC margin stock" means any equity security not traded on a national securities exchange that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an "OTC margin stock" unless it appears on the Board's periodically published list of OTC Margin Stocks.

(l) "Purpose credit" is credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying a margin stock.

[48 FR 35071, Aug. 3, 1983, as amended at 50 FR 10934, Mar. 19, 1985]

§ 207.3 General requirements.

(a) *Registration; termination of registration.* (1) Every person who, in the ordinary course of business, extends or maintains credit secured, directly or indirectly, by any margin stock shall register on Federal Reserve Form FR G-1 (OMB No. 7100-0011) within 30 days after the end of any calendar quarter during which (i) the amount of credit extended equals $200,000 or more, or (ii) the amount of credit outstanding at any time during that calendar quarter equals $500,000 or more.

(2) A registered lender may apply to terminate its registration, by filing Federal Reserve Form FR G-2 (OMB No. 7100-0011), if the lender has not, during the preceding six calendar months, had more than $200,000 of such credit outstanding. Registration shall be deemed terminated when the application is approved by the Board.

(b) *Limitation on extending purpose credit.* No lender, except a plan-lender, as defined in § 207.5(a)(1) of this part, shall extend any purpose credit, secured directly or indirectly by margin stock in an amount that exceeds the maximum loan value of the collateral securing the credit, as set forth in § 207.7 of this part.

(c) *Maintaining credit.* A lender may continue to maintain any credit initially in compliance with this part, regardless of:

(1) Reduction in the customer's equity resulting from change in market prices;

(2) Change in the maximum loan value prescribed by this part; or

(3) Change in the status of the security (from nonmargin to margin) securing an existing purpose credit.

(d) *Arranging credit.* No lender may arrange for the extension or maintenance of any credit, except upon the same terms and conditions under which the lender itself may extend or maintain credit under this part except this limitation shall not apply with respect to the arranging by a lender for a bank to extend or maintain credit on margin stock or exempted securities.

(e) *Purpose statement.* Except for credit extended under § 207.5 of this part, whenever a lender extends credit secured directly or indirectly by any margin stock, the lender shall require its customer to execute Form FR G-3 (OMB No. 7100-0018), which shall be signed and accepted by a duly authorized representative of the lender acting in good faith.

(f) *Purpose statement for revolving credit or multiple draw agreements.* (1) If a lender extends credit, secured directly or indirectly by any margin stock, under a revolving credit or other multiple draw agreement, Form

FR G-3 can either be executed each time a disbursement is made under the agreement, or at the time the credit arrangement is originally established.

(2) If a purpose statement executed at the time the credit arrangement is initially made indicates that the purpose is to purchase or carry margin stock, the credit will be deemed in compliance with this part if the maximum loan value of the collateral at least equals the aggregate amount of funds actually disbursed. For any purpose credit disbursed under the agreement, the lender shall obtain and attach to the executed Form FR G-3 a current list of collateral which adequately supports all credit extended under the agreement.

(g) *Single credit rule.* (1) All purpose credit extended to a customer shall be treated as a single credit, and all the collateral securing such credit shall be considered in determining whether or not the credit complies with this part.

(2) A lender that has extended purpose credit secured by margin stock may not subsequently extend unsecured purpose credit to the same customer unless the combined credit does not exceed the maximum loan value of the margin stock securing the prior credit.

(3) If a lender extended unsecured purpose credit to a customer prior to the extension of purpose credit secured by margin securities, the credits shall be combined and treated as a single credit solely for the purposes of the withdrawal and substitution provision of paragraph (i) of this section.

(4) If a lender extends purpose credit secured by any margin stock and nonpurpose credit to the same customer, the lender shall treat the credits as two separate loans and may not rely upon the required collateral securing the purpose credit for the nonpurpose credit.

(h) *Mixed collateral loans.* A purpose credit secured in part by margin stock, and in part by other collateral shall be treated as two separate loans, one secured by the margin stock and one by all other collateral. A lender may use a single credit agreement, if it maintains records identifying each portion of the credit and its collateral.

(i) *Withdrawals and substitutions.* (1) A lender may permit any withdrawal or substitution of cash or collateral by the customer if the withdrawal or substitution would not:

(i) Cause the credit to exceed the maximum loan value of the collateral; or

(ii) Increase the amount by which the credit exceeds the maximum loan value of the collateral.

(2) For purposes of this section, the maximum loan value of the collateral on the day of the withdrawal or substitution shall be used.

(j) *Exchange offers.* To enable a customer to participate in a reorganization, recapitalization, or exchange offer that is made to holders of an issue of margin stock a lender may permit substitution of the securities received. A nonmargin nonexempted security acquired in exchange for a margin stock shall be treated as if it is margin stock for a period of 60 days following the exchange.

(k) *Renewals and extensions of maturity.* A renewal or extension of the maturity of a credit need not be considered a new extension of credit if the amount of the credit is increased only by the addition of interest, service charges, or taxes with respect to the credit.

(l) *Transfers of credit.* (1) A transfer of a credit between customers or lenders shall not be considered a new extension of credit if:

(i) The original credit was in compliance with this part;

(ii) The transfer is not made to evade this part;

(iii) The amount of credit is not increased; and

(iv) The collateral for the credit is not changed.

(2) Any transfer between customers at the same lender shall be accompanied by a statement by the transferor customer describing the circumstances giving rise to the transfer and shall be accepted and signed by a duly authorized representative of the lender acting in good faith. The lender shall keep such statement with its records of the transferee account.

(3) When a transfer is made between lenders, the transferee lender shall obtain a copy of the Form FR G-3

originally filed with the transferor lender and retain the copy with its records of the transferee account.

(m) *Action for lender's protection.* Nothing in this part shall require a lender to waive or forego any lien, or prevent a lender from taking any action it deems necessary for its protection.

(n) *Mistakes in good faith.* A mistake in good faith in connection with the extension or maintenance of credit shall not be a violation of this part.

(o) *Annual Report.* Every registered lender shall, within 30 days following June 30 of every year, file Form FR G-4 (OMB No. 7100-0011).

(p) *Where to register and file applications and reports.* Registration statements, applications to terminate registration, and annual reports shall be filed with the Federal Reserve Bank of the district in which the principal office of the lender is located.

(q) *Lack of notice of NMS security designation.* Failure to treat an NMS security as a margin stock in connection with an extension of credit shall not be deemed a violation of this part if the designation is made between quarterly publications of the Board's List of OTC Margin Stocks and the lender does not have actual notice of the designation.

[48 FR 35071, Aug. 3, 1983, as amended at 49 FR 35758, Sept. 12, 1984]

§ 207.4 Credit to broker-dealers.

No lender shall extend or maintain credit secured, directly or indirectly, by any margin stock to a creditor who is subject to Part 220 of this chapter except in the following circumstances:

(a) *Emergency Loans.* Credit extended in good faith reliance upon a certification from the customer that the credit is essential to meet emergency needs arising from exceptional circumstances. Any collateral for such credit shall have good faith loan value.

(b) *Capital Contribution Loans.* Credit that the Board has exempted by order upon a finding that the exemption is necessary or appropriate in the public interest or for the protection of investors, provided the Securities Investor Protection Corporation certifies to the Board that the exemption is appropriate.

§ 207.5 Employee stock option, purchase and ownership plans.

(a) *Plan-lender; eligible plan.* (1) Plan-lender means any corporation, (including a wholly-owned subsidiary, or a lender that is a thrift organization whose membership is limited to employees and former employees of the corporation, its subsidiaries or affiliates) that extends or maintains credit to finance the acquisition of margin stock of the corporation, its subsidiaries or affiliates under an eligible plan.

(2) *Eligible Plan.* An eligible plan means any employee stock option, purchase, or ownership plan adopted by a corporation and approved by its stockholders that provides for the purchase of margin stock of the corporation, its subsidiaries, or affiliates.

(b) *Credit to exercise rights under or finance an eligible plan.* (1) If a plan-lender extends or maintains credit under an eligible plan, any margin security that directly or indirectly secures that credit shall have good faith loan value.

(2) Credit extended under this section shall be treated separately from credit extended under any other section of this part except § 207.3 (a) and (o) of this part.

(c) *Credit to ESOPs*

A lender may extend and maintain purpose credit without regard to the provisions of this part, except for §§ 207.3(a) and 207.3(o), if such credit is extended to an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code, as amended (26 U.S.C. 401).

[48 FR 35071, Aug. 3, 1983, as amended at 50 FR 26355, June 26, 1985]

§ 207.6 Requirements for the List of OTC Margin Stocks.

(a) *Requirements for inclusion on the list.* Except as provided in paragraph (d) of this section, an OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share;

(3) The stock is registered under section 12 of the Act, is issued by an insurance company subject to section 12(g)(2)(G) of the Act, is issued by a closed end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such security outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such a stock, as determined by the Board, is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list.* Except as provided in paragraph (d) of this section, an OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such security, as determined by the Board, is at least $2 per share;

(3) The security is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The issuer has at least $1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Removal from the list of OTC margin stocks.* The Board shall periodically remove from the list any stock that:

(1) Ceases to exist or of which the issuer ceases to exist, or

(2) No longer substantially meet the provisions of paragraph (b) of this section or § 207.2(k).

(d) *Discretionary authority of Board.* Without regard to the other paragraphs of this section, the Board may add to, or omit or remove from, the OTC margin stock list any equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(e) *Unlawful representations.* It shall be unlawful for any lender to make, or cause to be made, any representation to the effect that the inclusion of a security on the list OTC margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other communication containing a reference to the Board in connection with the list or securities on that list shall be an unlawful representation.

§ 207.7 Supplement: Maximum loan value of margin stock and other collateral.

(a) *Maximum loan value of a margin stock.* The maximum loan value of any margin stock, except options, is fifty per cent of its current market value.

(b) *Maximum loan value of nonmargin stock and all other collateral.* The maximum loan value of a nonmargin stock and all other collateral except puts, calls, or combinations thereof is their good faith loan value.

(c) *Maximum loan value of options.* Whether they are margin stock or not, puts, calls, and combinations thereof have no loan value.

INTERPRETATIONS

§ 207.101 Application to credit committed before February 1, 1968, where funds are disbursed thereafter.

(a) The Board has been presented with the question whether this part applies to an extension of credit to a corporation under a contract entered into on May 31, 1967, whereby the creditor agreed to purchase notes of the corporation totaling $150 million in three "closings" to be completed by December 2, 1968. Prior to February 1, 1968, $132,500,000 was disbursed. The remaining $16,500,000 was scheduled to be paid on February 21, 1968. It was assumed that the purpose of the credit was to carry stock that is registered on a national securities exchange, and that the credit may become secured by such stock.

(b) This part, which becomes effective March 11, 1968, will apply to credit extended, since (1) on that date the ordinary course of business, to purchase or carry registered equity securities, if the credit is secured by such securities. The above-described credit was the subject of an agreement executed prior to February 1, 1968, that bound the parties as to the amount, interest rate, term, and principal conditions of the credit, although some of the funds remained to be disbursed.

(c) The Board concluded that the funds described above, to be extended after February 1, 1968, will be extended pursuant to a firm commitment executed prior to that date. The Board was of the opinion that the date a commitment to extend credit becomes binding should be regarded as the date when the credit is extended, since (1) on that date the parties should be aware of law and facts surrounding the transaction and (2) generally, the date of contract is controlling for purposes of margin regulations and Federal securities law, regardless of the delivery of cash or securities. Accordingly, the Board concluded that this part did not apply to this extension of credit.

(15 U.S.C. 78w)

[33 FR 4248, Mar. 7, 1968]

§ 207.102 When bank in "good faith" has not relied on stock as collateral.

For text of this interpretation, see § 221.117 of this subchapter.

[33 FR 7485, May 21, 1968]

§ 207.103 Corporate guaranty of bank loan as extension of credit in the ordinary course of business.

(a) The Board recently considered the questions whether (1) the guaranty by a corporation of an "unsecured" bank loan to exercise an option to purchase stock of the corporation is an "extension of credit" for the purpose of this part (Regulation G), (2) such a guaranty is given "in the ordinary course of business" of the corporation, as defined in § 207.2(b), and (3) the bank involved took part in arranging for such credit on better terms than it could extend under the provisions of Part 221 (Regulation U) of this subchapter.

(b) The Board understood that any officer or employee included under the corporation's stock option plan who wished to exercise his option could obtain a loan for the purchase price of the stock by executing an unsecured note to the bank. The corporation would issue to the bank a guaranty of the loan and hold the purchased shares as collateral to secure it against loss on the guaranty. Stock of the corporation is registered on a national securities exchange.

(c) A lender is subject to the registration and other requirements of this part if, in the ordinary course of his business, he extends credit on collateral that includes any registered equity securities in the amount of $50,000 or more in any calendar quarter, or has such credit outstanding in any calendar quarter in the amount of $100,000 or more. The Board understood that the corporation in question had $100,000 in guaranties outstanding during the applicable calendar quarter.

(d) In the Board's judgment a person who guarantees a loan, and thereby becomes liable for the amount of the loan in the event the borrower should default, is lending his credit to the borrower. In the circumstances described, such a lending of credit must be considered an "extension of credit" under this part in order to prevent circumvention of the regulation's limitation on the amount of credit that can be extended on the security of registered stock.

(e) Under § 207.2(b), "the term 'in the ordinary course of his business' means * * * in the case of a person other than an individual, carrying out or in furtherance of any business purpose." In general, stock option plans are designed to provide a company's employees with a proprietary interest in the company in the form of ownership of the company's stock. Such plans increase the company's ability to attract and retain able personnel and, accordingly, promote the interest of the company and its stockholders, while at the same time providing the company's employees with additional incentive to work toward the company's future success. An arrangement whereby participating employees may finance the exercise of their options through an unsecured bank loan guaranteed by the company, thereby facilitating the employees' acquisition of company stock, is likewise designed to promote the company's interest and is, therefore, in furtherance of a business purpose.

(f) For the reasons indicated, the Board concluded that under the circumstances described a guaranty by the corporation constitutes credit extended in the ordinary course of business under this part, that the corporation is required to register pursuant to § 207.1(a), and that such guaranties may not be given in excess of the maximum loan value of the collateral pledged to secure the guaranty, which is 20 percent under the current supplement to this part.

(g) Section 221.3(u) of this subchapter provides that "no bank shall arrange for the extension or maintenance of any credit for the purpose of purchasing or carrying any stock registered on a national securities exchange, except upon the same terms and conditions on which the bank itself could extend or maintain this credit" under the provisions of Part 221. Since the Board concluded that the giving of a guaranty by the corporation to secure the loan described above constitutes an extension of credit, and since the use of a guaranty in the manner described could not be effectuated without the concurrence of the bank involved, the Board further concluded that the bank took part in "arranging" for the extension of credit in excess of the maximum loan value of the stock pledged to secure the guaranties.

[34 FR 7005, Apr. 29, 1969; 34 FR 8351, May 30, 1969]

§ 207.104 Contribution to joint venture as extension of credit when the contribution is disproportionate to the contributor's share in the venture's profits or losses.

(a) The Board recently considered the question whether a joint venture, structured so that the amount of capital contribution to the venture would be disproportionate to the right of participation in profits or losses, constitutes an "extension of credit" for the purpose of Regulation G.

(b) An individual and a corporation plan to establish a joint venture to engage in the business of buying and selling securities, including registered equity securities. The individual would contribute 20 percent of the capital and receive 80 percent of the profits or losses; the corporate share would be the reverse. In computing profits or losses, each participant would first receive interest at the rate of 8 percent on his respective capital contribution. Although purchases and sales would be mutually agreed upon, the corporation could liquidate the joint portfolio if the individual's share of the losses equaled or exceeded his 20 percent contribution to the venture. The corporation would hold the securities, and upon termination of the venture, the assets would first be applied to repayment of capital contributions.

(c) In general, the relationship of joint venture is created when two or more persons combine their money, property, or time in the conduct of some particular line of trade or some particular business and agree to share jointly, or in proportion to capital contributed, the profits and losses of the undertaking.

(d) The incidents of the joint venture described above, however, closely parallel those of an extension of margin credit, with the corporation as lender and the individual as borrower. The corporation supplies 80 percent of the purchase price of securities in exchange for a net return of 8 percent of the amount advanced plus 20 percent of any gain. Like a lender of securities credit, the corporation is insulated against loss by retaining the right to liquidate the collateral before the securities decline in price below the amount of its contribution. Conversely, the individual—like a customer who borrows to purchase securities—puts up only 20 percent of their cost, is entitled to the principal portion of any appreciation in their value, bears the principal risk of loss should that value decline, and does not stand to gain or lose except through a change in value of the securities purchased.

(e) The Board is of the opinion that where the right of an individual to share in profits and losses of such a joint venture is disproportionate to his contribution to the venture:

(1) The joint venture involves an extension of credit by the corporation to the individual;

(2) The extension of credit is to purchase or carry registered equity securities, and is collateralized by such securities; and

(3) If the corporation is neither a bank subject to Regulation U nor a broker or dealer subject to Regulation T, the credit is of the kind described by § 207.1(a) of Regulation G.

[34 FR 9121, June 10, 1969]

§ 207.105 Applicability of plan-lender provisions to financing of stock options and stock purchase rights qualified or restricted under Internal Revenue Code.

(a) The Board has recently been asked whether the plan-lender provisions of § 207.4(a) of Regulation G, "Securities Credit by Persons other than Banks, Brokers, or Dealers," were intended to apply to the financing of stock options restricted or qualified under the Internal Revenue Code where such options or the option plan do not provide for such financing.

(b) Section 207.4(a) of Regulation G permits a corporation or its plan-lender to extend credit to its employees without regard to the normal credit limitations of the regulation for the purpose of exercising stock options or stock purchase rights if the plan or agreement under which the credit is extended complies with certain requirements. Paragraph (1) of § 207.4(a) is in effect a "grandfather clause," exempting from most of the credit limitations of Regulation G any such credit extended in connection with options or rights meeting certain specified "pre-existing" conditions. Generally, these conditions recognize inequities that would result from application of the regulation's restrictions to credit extended in connection with options or rights granted, or contractual commitments made prior to February 1, 1968, the date the adoption of Regulation G was announced. Paragraph (2) of § 207.4(a) provides a more limited exemption for credit extended in connection with options or rights granted after February 1, 1968, and establishes requirements for plans seeking to qualify for this exemption.

(c) Paragraph (iii) of § 207.4(a)(1), which was added effective July 8, 1969, was designed to provide exemption, from all but certain reporting provisions, for credit extended pursuant to the exercise of stock options or rights that are qualified or restricted under sections 422-424 of the Internal Revenue Code, if the options or rights were granted prior to February 1, 1968. This exemption applies only to those plans that provided for credit. This is because (1) employer-lenders who intended to supply credit when granting such options could not have anticipated the requirements of Regulation G and (2) the position of the Commissioner of Internal Revenue that such plans cannot be modified, would frustrate that intention. If a particular plan did not provide for credit, no expectations would be defeated by the fact that it could not be modified to add such provisions.

(d) The recent amendment to paragraph (2) of § 207.4(a), which applies to stock purchase as well as option plans, was to clarify that to be treated as subject to the more limited exemption in that subparagraph, an otherwise appropriate credit arrangement need not be part of the plan. It is the Board's experience that in some nonqualified plans, particularly stock purchase plans, the credit arrangement is distinct from the plan. So long as the credit extended, and particularly, in the present context, the character of the plan-lender, conforms with the requirements of the regulation, the fact that option and credit are provided for in separate documents is immaterial. It should be emphasized that the Board does not express any view on the preferability of qualified as opposed to nonqualified options; its role is merely to prevent excessive credit in this area.

(e) The amendments promulgated on February 10, 1969, made one other change in § 207.4(a). This was the addition of the provision that the plan-lender must be wholly owned as well as controlled by the issuer of the collateral (taking as a whole, corporate groups including subsidiaries and affiliates). This insertion was made to clarify the Board's intent that, to qualify for special treatment under that section, the lender must stand in a special employer-employee relationship with the borrower, and a special relationship of issuer with regard to the collateral. The fact that the Board, for convenience and practical reasons, permitted the employing corporation to act through a subsidiary or other entity should not be interpreted to mean the Board intended the lender to be other than an entity whose overriding interests were coextensive with the issuer. An independent corporation, with independent interests was never intended, regardless of form, to be at the base of exempt stock-plan lending.

[34 FR 18242, Nov. 14, 1969]

§ 207.106 "Deep in the money put and call options" as extensions of credit.

For text of the interpretation on this subject, see § 220.122 of this subchapter.

(15 U.S.C. 78w)

[35 FR 3280, Feb. 21, 1970]

§ 207.107 Status after July 8, 1969, of credit extended prior to that date to purchase or carry mutual fund shares.

For the text of interpretation, see § 221.119 of this subchapter.

[35 FR 6959, May 1, 1970]

§ 207.108 Applicability of margin requirements to credit in connection with insurance premium funding programs.

(a) The Board has been asked numerous questions regarding purpose credit in connection with insurance premium funding programs. The inquiries are included in a set of guidelines in the format of questions and answers which follow. A glossary of terms customarily used in connection with insurance premium funding credit activities is included in the guidelines. Under a typical insurance premium funding program, a borrower acquires mutual fund shares for cash, or takes fund shares which he already owns, and then uses the loan value (currently 40 percent as set by the Board) to buy insurance. Usually, a funding company (the issuer) will sell both the fund shares and the insurance through either independent broker/dealers or subsidiaries or affiliates of the issuer. A typical plan may run for 10 or 15 years with annual insurance premiums due. To illustrate, assuming an annual insurance premium of $300, the participant is required to put up mutual fund shares equivalent to 250 percent of the premium or $750 ($750×40 percent loan value equals $300 the amount of the insurance premium which is also the amount of the credit extended).

(b) These guidelines also (1) clarify an earlier 1969 Board interpretation to show that the public offering price of mutual fund shares (which includes the front load, or sales commission) may be used as a measure of their current market value when the shares serve as collateral on a purpose credit throughout the day of the purchase of the fund shares, and (2) relax a 1965 Board position in connection with accepting purpose statements by mail. It is the Board's view that when it is clearly established that a purpose statement supports a purpose credit then such statement executed by the borrower may be accepted by mail, provided it is received and also executed by the lender before the credit is extended.

[39 FR 9425, Mar. 11, 1974]

§ 207.109 Extension of credit in certain stock option and stock purchase plans.

Questions have been raised as to whether certain stock option and stock purchase plans involve extensions of credit subject to Regulation G when the participant is free to cancel his participation at any time prior to full payment, but in the event of cancellation the participant remains liable for damages. It thus appears that the participant has the opportunity to gain and bears the risk of loss from the time the transaction is executed and payment is deferred. In some cases brought to the Board's attention damages are related to the market price of the stock, but in others, there may be no such relationship. In either of these circumstances, it is the Board's view that such plans involve extensions of credit. Accordingly, where the security being purchased is a margin security and the credit is secured, directly or indirectly, by any margin security, the creditor must register and the credit must conform with either the regular margin requirements of § 207.1(c) or the special "plan-lender" provisions set forth in § 207.4(a) of the regulation, whichever is applicable. This assumes, of course, that the amount of credit extended is such that the creditor is subject to the registration requirements of § 207.1(a) of the regulation.

[39 FR 43815, Dec. 19, 1974]

§ 207.110 Accepting a purpose statement through the mail without benefit of face-to-face interview.

(a) The Board has been asked whether the acceptance of a purpose statement submitted through the mail by a lender subject to the provisions of Regulation G will meet the good faith requirement of § 207.1(e). Section 207.1(e) states that in connection with any credit secured by collateral which includes any margin security, a lender must obtain a purpose statement executed by the borrower and accepted by the lender in good faith. Such acceptance requires that the lender be alert to the circumstances surrounding the credit and if further information suggests inquiry, he must investigate and be satisfied that the statement is truthful.

(b) The lender is a subsidiary of a holding company which also has another subsidiary which serves as underwriter and investment advisor to various mutual funds. The sole business of the lender will be to make "non-purpose" consumer loans to shareholders of the mutual funds, such loans to be collateralized by the fund shares. Mutual funds shares are margin securities for purposes of Regulation G. Solicitation and acceptance of these consumer loans will be done principally through the mail and the lender wishes to obtain the required purpose statement by mail rather than by a face-to-face interview. Personal interviews are not practicable for the lender because shareholders of the funds are scattered throughout the country. In order to provide the same safeguards inherent in face-to-face interviews, the lender has developed certain procedures designed to satisfy the good faith acceptance requirement of the regulation.

(c) The purpose statement will be supplemented with several additional questions relevant to the prospective borrower's investment activities such as purchases of any security within the last 6 months, dollar amount, and obligations to purchase or pay for previous purchases; present plans to purchase securities in the near future, participations in securities purchase plans, list of unpaid debts, and present income level. Some questions have been modified to facilitate understanding but no questions have been deleted. If additional inquiry is indicated by the answers on the form, a loan officer of the lender will interview the borrower by telephone to make sure the loan is "non-purpose". Whenever the loan exceeds the "maximum loan value" of the collateral for a regulated loan, a telephone interview will be done as a matter of course.

(d) Although the Board has expressed no views as to the necessity for face-to-face meetings between borrower and lending officer under Regulation G, an interpretation under Regulation U published in 1965 (12 CFR 221.115) on the subject has usually been considered applicable. That view, however, was expressed before the adoption by the Board of Regulation X (12 CFR Part 224) in 1971. One of the stated purposes of Regulation X was to prevent the infusion of unregulated credit into the securities markets by borrowers falsely certifying the purpose of a loan. The Board is of the view that the existence of Regulation X, which makes the borrower liable for willful violations of the margin regulations, will allow a lender subject to Regulation G or U to meet the good faith acceptance requirement of §§ 207.1(e) and 221.3(a), respectively, without a face-to-face interview if the lender adopts a program, such as the one described above, which requires additional detailed information from the borrower and proper procedures are instituted to verify the truth of the information received. The 1965 interpretation has therefore been withdrawn. Lenders intending to embark on a similar program should discuss proposed plans with their district Federal Reserve Bank. Lenders may have existing or future loans with the prospective customers which could complicate the efforts to determine the true purpose of the loan. In addition, Regulation U differs from Regulation G in many important respects.

(e) Section 220.7(a) of Regulation T, in general, prohibits a broker/dealer from arranging any credit which he himself cannot extend. Therefore, the Board cautions that any prospectus of sales information for the mutual fund shares may not offer the services of the lending company, as any broker/dealer selling the fund shares would thereby be deemed to have "arranged" a loan in violation of Regulation T.

[43 FR 30038, July 13, 1978]

§ 207.111 Combined credit for exercising employee stock options and paying income taxes incurred as a result of such exercise.

(a) The Board of Governors has been asked whether § 207.1(h) of Regulation G prevents a lender under an employee stock option plan that meets the requirements of § 207.4(a) from extending credit to an employee to pay the income taxes incurred as a result of the exercise of the stock option, in addition to the credit to cover the purchase price of the stock.

(b) Section 207.1(h) prohibits a lender governed by Regulation G from extending purpose credit if it is secured by collateral including margin securities, which also secures any other credit to the same person in excess of $5,000. Unless credit to pay income taxes is also treated as purpose credit, it could not be extended in an amount in excess of $5,000 when the borrower also has a purpose loan outstanding with the lender, secured by margin securities, since such collateral would be deemed to be also securing the income tax loan. "Purpose credit" is defined in § 207.2(c) of the regulation as "credit which is for the purpose, whether immediate, incidental, or ultimate, of purchasing or carrying a margin security."

(c) Section 207.4(a), which provides special treatment for credit extended under employee stock option plans, was designed to encourage their use in recognition of their value in giving an employee a proprietary interest in the business. Taking a position that might discourage the exercise of options because of tax complications would conflict with the purpose of § 207.4(a).

(d) Accordingly, the Board has concluded that the combined loans for the exercise of the option and the payment of the taxes in connection therewith under plans complying with § 207.4(a) may be regarded as credit which is for the purpose of purchasing or carrying a margin security within the meaning of § 207.2(c). Since the combined loans are treated as purpose credit, § 207.1(h) does not prohibit the transaction, irrespective of amount.

(15 U.S.C. 78g and 78w)

[45 FR 44256, July 1, 1980]

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

REGULATIONS

Sec.
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AUTHORITY: 12 U.S.C. 248, 321-338, 486, 1814, 3907, 3909, unless otherwise noted.

REGULATIONS

SOURCE: Sections 208.1 to 208.11 contained in Regulation H, 17 FR 8006, Sept. 4, 1952, unless otherwise noted.

§ 208.1 Definitions.

For the purposes of this part:

(a) The term "State bank" means any bank or trust company incorporated under a special or general law of a State or under a general law for the District of Columbia, any mutual savings bank (unless otherwise indicated), and any Morris Plan bank or other incorporated banking institution engaged in similar business.[1]

(b) The term "mutual savings bank" means a bank without capital stock transacting a savings bank business, the net earnings of which inure wholly to the benefit of its depositors after payment of obligations for any advances by its organizers, and in addition thereto includes any other banking institution the capital of which consists of weekly or other time deposits which are segregated from all other deposits and are regarded as capital stock for the purposes of taxation and the declaration of dividends.

(c) The term "Board" means the Board of Governors of the Federal Reserve System.

(d) The term "board of directors" means the governing board of any institution performing the usual functions of a board of directors.

(e) The term "Federal Reserve Bank stock" includes the deposit which may be made with a Federal Reserve Bank in lieu of a subscription for stock by a mutual savings bank which is not permitted to purchase stock in a Federal Reserve Bank, unless otherwise indicated.

(f) The terms "capital" and "capital stock" means common stock, preferred stock and legally issued capital notes and debentures purchased by the Reconstruction Finance Corporation which may be considered capital and capital stock for purposes of membership in the Federal Reserve System under the provisions of section 9 of the Federal Reserve Act.

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[1] Under the provisions of section 19 of the Federal Reserve Act, national banks and banks organized under local laws, located in a dependency or insular possession or any part of the United States outside of the States of the United States and the District of Columbia are not required to become members of the Federal Reserve System but may, with the consent of the board, become members of the System. However, this Part 208 is applicable only to the admission of banks eligible for admission to membership under section 9 of the Federal Reserve Act and does not cover the admission of banks eligible under section 19 of the Act. Any bank desiring to be admitted to the System under the provisions of section 19 should communicate with the Federal Reserve Bank with which it desires to do business.

[Reg. H, 17 FR 8006, as amended at 24 FR 7029, Aug. 29, 1959]

§ 208.2 Eligibility requirements.

(a) Under the terms of section 9 of the Federal Reserve Act, as amended, to be eligible for admission to membership in the Federal Reserve System:

(1) A State bank, other than a mutual savings bank, must possess capital stock and surplus which, in the judgment of the Board, are adequate in relation to the character and condition of its assets and to its existing and prospective deposit liabilities and other corporate responsibilities: *Provided*, That no bank engaged in the business of receiving deposits other than trust funds, which does not possess capital stock and surplus in an amount equal to that which would be required for the establishment of a national banking association in the place in which it is located, shall be admitted to membership unless it is, or has been, approved for deposit insurance under the Federal Deposit Insurance Act.

(2) A mutual savings bank must possess surplus and undivided profits not less than the amount of capital required for the organization of a national bank in the place where it is situated.

(b) The minimum capital required for the organization of a national bank, referred to hereinbefore in connection with the capital required for admission to membership in the Federal Reserve System, is as follows:

	Minimum capital
If located in a city or town with a population:	
Not exceeding 6,000 inhabitants	$50,000
Exceeding 6,000 but not exceeding 50,000 inhabitants	100,000
Exceeding 50,000 inhabitants (except as stated below)	200,000
In an outlying district of a city with a population exceeding 50,000 inhabitants; provided State law permits organization of State banks in such location with a capital of $100,000 or less	100,000

With certain exceptions not here applicable, a national bank must have surplus equal to 20 percent of its capital in order to commence business.

§ 208.3 Insurance of deposits.

Any State bank becoming a member of the Federal Reserve System which is engaged in the business of receiving deposits other than trust funds and which is not at the time an insured bank under the provisions of the Federal Deposit Insurance Act, will become an insured bank under the provisions of that Act on the date upon which it becomes a member of the Federal Reserve System.[2] In the case of an insured bank which is admitted to membership in the Federal Reserve System, the bank will continue to be an insured bank.

§ 208.4 Application for membership.

(a) *State bank, other than a mutual savings bank.* A state bank, other than a mutual savings bank, applying for membership, shall make application on Form FR 83A to the Board for an amount of capital stock in the Federal Reserve Bank of its district equal to six percent of the paid-up capital stock and surplus of the applying institution.

(b) *Mutual savings bank.* A mutual savings bank applying for membership shall make application on Form FR 83B to the Board for an amount of capital stock in the Federal Reserve Bank of its district equal to six-tenths of one percent of its total deposit liabilities as shown by the most recent report of examination of such institution preceding its admission to membership, or, if such institution be not permitted by the laws under which it was organized to purchase stock in a Federal Reserve Bank, on Form FR 83C, for permission to deposit with the Federal Reserve Bank an amount equal to the amount which it would have been required to pay in on account of a subscription to capital stock.

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[2] In the case of a State bank which is engaged in the business of receiving deposits other than trust funds and which at the time of its admission to membership in the Federal Reserve System is not an insured bank, the Board is required under the provisions of sections 4 and 6 of the Federal Deposit Insurance Act to issue a certificate to the Federal Deposit Insurance Corporation to the effect that the bank is a member of the Federal Reserve System and that consideration has been given to the financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not its corporate powers are consistent with the purposes of the Federal Deposit Insurance Act.

(c) *Mutual savings bank which is not authorized to purchase stock of Federal Reserve Bank at time of admission.* If a mutual savings bank be admitted to membership on the basis of a deposit of the required amount with the Federal Reserve Bank in lieu of payment upon capital stock because the laws under which such bank was organized do not at that time authorize it to purchase stock in the Federal Reserve Bank, it shall subscribe on Form F.R. 83D for the appropriate amount of stock in the Federal Reserve Bank whenever such laws are amended so as to authorize it to purchase stock in a Federal Reserve Bank.[3]

(d) *Execution and filing of application.* Each application made under the provisions of this section and the exhibits referred to in the application blank shall be executed and filed, in duplicate, with the Federal Reserve Bank of the district in which the applying bank is located.

§ 208.5 Approval of application.

(a) *Matters given special consideration by Board.* In passing upon an application, the following matters will be given special consideration:

(1) The financial history and condition of the applying bank and the general character of its management;

(2) The adequacy of its capital structure in relation to the character and condition of its assets and to its existing and prospective deposit liabilities and other corporate responsibilities; and its future earnings prospects;

(3) The convenience and needs of the community to be served by the bank; and

(4) Whether its corporate powers are consistent with the purposes of the Federal Reserve Act.

(b) *Procedure for admission to membership after approval of application.* If an applying bank conforms to all the requirements of the Federal Reserve Act and this part and is otherwise qualified for membership, its application will be approved subject to such conditions as may be prescribed pursuant to the provisions of the Federal Reserve Act. When the conditions prescribed have been accepted by the applying bank, it should pay to the Federal Reserve Bank of its district one-half of the amount of its subscription and, upon receipt of advice from the Federal Reserve Bank as to the required amount, one-half of one percent of its paid-up subscription for each month from the period of the last dividend.[4] The remaining half of the bank's subscription shall be subject to call when deemed necessary by the Board. The bank's membership in the Federal Reserve System shall become effective on the date as of which a certificate of stock of the Federal Reserve Bank is issued to it pursuant to its application for membership or, in the case of a mutual savings bank which is not authorized to subscribe for stock, on the date as of which a certificate representing the acceptance of a deposit with the Federal Reserve Bank in place of a payment on account of a subscription to

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[3] The Federal Reserve Act provides that, if the laws under which any such savings bank was organized be not amended at the first session of the legislature following the admission of the savings bank to membership so as to authorize mutual savings banks to purchase Federal Reserve Bank stock, or if such laws be so amended and the bank fail within six months thereafter to purchase such stock, all of its rights and privileges as a member bank shall be forfeited and its membership in the Federal Reserve System shall be terminated in the manner prescribed in section 9 of the Federal Reserve Act.

[4] In the case of a mutual savings bank which is not permitted by the laws under which it was organized to purchase stock in a Federal Reserve Bank, it shall deposit with the Federal Reserve Bank an amount equal to the amount which it would have been required to pay in on account of a subscription to capital stock.

is issued to it pursuant to its ap-
tion for membership.

6 Privileges and requirements of
embership.

ery State bank while a member of
'ederal Reserve System—

Shall retain its full charter and
tory rights subject to the provi-
of the Federal Reserve Act and
acts of Congress applicable to
ber State banks, to the regula-
of the Board made pursuant to
and to the conditions prescribed
ne Board and agreed to by such
prior to its admission;

Shall enjoy all the privileges and
ve all the requirements of the
ral Reserve Act and other acts of
ress applicable to member State
s and of the regulations of the
d made pursuant to law which are
cable to member State banks;

Shall comply at all times with
and all conditions of membership
ribed by the Board in connection
the admission of such bank to
bership in the Federal Reserve
em; and

Shall not reduce its capital stock
ot with the prior consent of the
d.[5]

7 Conditions of membership.

Pursuant to the authority con-
d in the first paragraph of sec-
9 of the Federal Reserve Act,
h authorizes the Board to permit
ying State banks to become mem-
of the Federal Reserve System
ject to the provisions of this act
to such conditions as it may pre-
e pursuant thereto," the Board,
pt as hereinafter stated, will pre-
e the following conditions of
bership for each State bank here-
applying for admission to the
ral Reserve System, and, in addi-
such other conditions as may be
idered necessary or advisable in
particular case:

(1) Such bank at all times shall conduct its business and exercise its powers with due regard to the safety of its depositors, and, except with the permission of the Board of Governors of the Federal Reserve System, such bank shall not cause or permit any change to be made in the general character of its business or in the scope of the corporate powers exercised by it at the time of admission to membership.[6]

(2) The net capital and surplus funds of such bank shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities.

(b) The acquisition by a member State bank of the assets of another institution through merger, consolidation, or purchase may result in a change in the general character of its business or in the scope of its corporate powers within the meaning of the condition set forth in paragraph (a)(1) of this section, and if at any time a bank subject to such condition anticipates making any such acquisition a detailed report setting forth all the facts in connection with the transaction shall be made promptly to the Federal Reserve Bank of the district in which such bank is located.

(c) If at any time, in the light of all the circumstances, the aggregate amount of a member State bank's net capital and surplus funds appears to

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is applies to capital stock of all classes
o capital notes and debentures legally
l and purchased by the Reconstruction
ce Corporation which, under the Fed-
Reserve Act, are considered as capital
for purposes of membership.

[6] For many years, the Board prescribed, as standard conditions of membership, a condition which, in general, prohibited banks from engaging as a business in the sale of real estate loans to the public and certain conditions relating to the exercise of trust powers, including one which prohibited self-dealing in the investment of trust funds. The elimination of these conditions as standard conditions of membership does not reflect any change in the Board's position as to the undesirability of the practices formerly prohibited by such conditions; and attention is called to the fact that engaging as a business in the sale of real estate loans to the public or failing to conduct trust business in accordance with the applicable State laws and sound principles of trust administration may constitute unsafe or unsound practices and violate the condition set forth in this subparagraph.

be inadequate, the bank, within such period as shall be deemed by the Board to be reasonable for this purpose, shall increase the amount thereof to an amount which in the judgment of the Board shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities.

§ 208.8 Banking practices.

(a) *Scope.* No State member bank shall engage in practices which are unsafe or unsound or which result in a violation of law, rule, or regulation, or which violate any condition imposed by or agreements entered into with the Board. This section outlines certain of the practices in which State member banks should not engage.

(b) *Waiver.* A State member bank has the right to petition the Board to waive the conditions of this § 208.8. A waiver may be granted upon a showing of good cause. The Board in its discretion may choose to limit, among other items, the scope, duration, and timing of the waiver.

(c) *Effect on other banking practices.* Nothing in this section shall be construed as restricting in any manner the Board's authority to deal with any banking practice which is deemed to be unsafe or unsound or otherwise not in accordance with law, rule, or regulation or which violates any condition imposed in writing by the Board in connection with the granting of any application or other request by a State member bank, or any written agreement entered into by such bank with the Board. Compliance with the provisions of this section shall neither relieve a State member bank of its duty to conduct all operations in a safe and sound manner nor prevent the Board from taking whatever action it deems necessary and desirable to deal with general or specific acts or practices which, although perhaps not violating the provisions of this section, are considered nevertheless to be an unsafe or unsound banking practice.

(d) *Letters of credit and acceptances*—(1) *Definitions.* For the purpose of this paragraph, "standby letters of credit" include every letter of credit (or similar arrangement however named or designated) which represents an obligation to the beneficiary on the part of the issuer (i) to repay money borrowed by or advanced to or for the account of the account party or (ii) to make payment on account of any evidence of indebtedness undertaken by the account party, or (iii) to make payment on account of any default by the account party in the performance of an obligation.[6a] An "ineligible acceptance" is a time draft accepted by a bank, which does not meet the requirements for discount with a Federal Reserve Bank.

(2) *Restrictions.* (i) A State member bank shall not issue, extend, or amend a standby letter of credit (or other similar arrangement, however named or described) or make an ineligible acceptance or grant any other extension of credit if, in the aggregate, the amount of all standby letters of credit and ineligible acceptances issued, renewed, extended, or amended on or after the effective date of this amendment, when combined with other extensions of credit issued by the bank would exceed the legal limitations on loans imposed by the State (including limitations to any one customer or on aggregate extensions of credit) or exceed legal limits pertaining to loans to affiliates under Federal law (12 U.S.C. 371(c)): *Provided,* That, if any State has a separate limitation on the issuance of letters of credit or acceptances which apply to a standby letter of credit or to ineligible acceptances respectively, then the separate limitation shall apply in lieu of the standard loan limitation.

(ii) No State member bank shall issue a standby letter of credit or ineligible acceptance unless the credit standing of the account party under any letter of credit, and the customer of an ineligible acceptance, is the subject of credit analysis equivalent to

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[6a] As defined, "standby letter of credit" would not include (1) commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer and which do not "guaranty" payment of a money obligation or (2) a guaranty or similar obligation issued by a foreign branch in accordance with and subject to the limitations of Regulation K.

at applicable to a potential borrower
an ordinary loan situation.
(iii) If several banks participate in
e issuance of a standby letter of
edit or ineligible acceptance under a
ona fide binding agreement which
rovides that, regardless of any event,
ch participant shall be liable only
o to a certain percentage or certain
nount of the total amount of the
andby letter of credit or ineligible
ceptance issued, a State member
nk need only include the amount of
s participation for purposes of this
ction; otherwise, the entire amount
the letter of credit or acceptance
ust be included.
(3) *Disclosure; recordkeeping.* The
nount of all outstanding standby let-
rs of credit and ineligible accept-
nces, regardless of when issued, shall
adequately disclosed in the bank's
ablished financial statements.

ach State member bank shall main-
in adequate control and subsidiary
cords of its standby letters of credit
mparable to the records maintained
connection with the bank's direct
ans so that at all times the bank's
tential liability thereunder and the
nk's compliance with this paragraph
) may be readily determined.
(4) *Exceptions.* A standby letter of
edit is not subject to the restrictions
t forth above in the following situa-
ons:
(i) Prior to or at the time of issuance
the credit, the issuing bank is paid
amount equal to the bank's maxi-
um liability under the standby letter
credit; or
(ii) Prior to or at the time of issu-
nce, the bank has set aside sufficient
nds in a segregated, clearly ear-
arked deposit account to cover the
nk's maximum liability under the
andby letter of credit.
(e) *Loans by State member banks in*
entified flood hazard areas—(1)
roperty securing loan must be in-
red against flood. No State member
nk shall make, increase, extend or
new any loan secured by improved
al estate or a mobile home located or
be located in an area that has been
entified by the Secretary of Housing
d Urban Development as an area
aving special flood hazards and in
hich flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or to the maximum limit of coverage made available with respect to the particular type of property under the Act, whichever is less. Notwithstanding the foregoing provision, flood insurance shall not be required on any State-owned property that is covered under an adequate policy of self-insurance satisfactory to the Secretary of Housing and Urban Development who shall publish and periodically revise the list of states falling within the exemption provided in this paragraph.

(2) *Records of compliance.* Each State member bank shall maintain, in connection with all loans secured by improved real estate or a mobile home, sufficient records to indicate the method used by the bank to determine whether or not such loans fall within the provisions of this § 208.8(e).

(3)(i) *Notice of special flood hazards and availability of Federal disaster relief assistance.* Each State member bank shall, as a condition of making, increasing, extending or renewing any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards, mail or deliver as soon as feasible but not less than 10 days in advance of closing of the transaction (or not later than the bank's commitment, if any, if the period between commitment and closing is less than 10 days) a written notice to the borrower stating: (*a*) That the property securing the loan is or will be located in an area so identified, or in lieu of such notification a State member bank may obtain satisfactory written assurances from a seller or lessor stating that such seller or lessor has notified the borrower, prior to the execution of any agreement for sale or lease, that the property securing the loan is or will be located in an area so identified; and (*b*) whether, in the event of damage to the property caused by flooding in a federally-declared disaster, Federal disaster relief assistance will be available for such property. Each State member bank shall require the borrower, prior to closing, to provide the bank with a written acknowledgment that the property securing the loan is or will be located in an area so identified and that the borrower has received the above-required notice regarding Federal disaster relief assistance.

(ii) *Sample notices.* A State member bank providing written notice containing the language presented in appendix A within the time limits prescribed in paragraph (a) of this section will be considered to be in compliance with the notice requirements of paragraph (a) of this section.

(f) *State member banks as transfer agents.* (1) On or after December 1, 1975, no State member bank or any of its subsidiaries shall act as transfer agent, as defined in section 3(a)(25) of the Securities Exchange Act of 1934, ("Act") with respect to any security registered under section 12 of the Act or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section, unless it shall have filed a registration statement with the Board in conformity with the requirements of Form TA-1, which registration statement shall have become effective as hereinafter provided. Any registration statement filed by a State member bank or its subsidiary shall become effective on the thirtieth day after filing with the Board unless the Board takes affirmative action to accelerate, deny or postpone such registration in accordance with the provisions of section 17A(c) of the Act. Such filings with the Board will constitute filings with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act.

(2) If the information contained in Form TA-1 becomes inaccurate, misleading or incomplete for any reason, the bank or its subsidiary shall, within sixty calendar days thereafter, file an amendment to Form TA-1 correcting the inaccurate, misleading or incomplete information.

(3) Each registration statement on Form TA-1 or amendment thereto shall constitute a "report" or "application" within the meaning of sections 17, 17A(c) and 32(a) of the Act.

(g) *State member banks as registered clearing agencies*—(1) *Requirement of notice.* Any State, member bank or any of its subsidiaries that is a registered clearing agency pursuant to section 17A(b) of the Securities Exchange Act of 1934 (the "Act"), which imposes any final disciplinary sanction on any participant therein, denies participation to any applicant or prohibits or limits any person in respect to access to services offered by such registered clearing agency, shall file with the Board and the appropriate regulatory agency (if other than the Board) for a participant or applicant notice thereof in the manner prescribed herein.

(2) *Notice of final disciplinary action.* Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final disciplinary action with respect to any participant shall promptly file a notice thereof with the Board in accordance with paragraph (g)(3) of this section. For the purposes of this paragraph "final disciplinary action " shall mean the imposition of any disciplinary sanction pursuant to section 17A(b)(3)(G) of the Act or other action of a registered clearing agency which, after notice and opportunity for hearing, results in any final disposition of charges of:

(i) One or more violations of the rules of such registered clearing agency; or

(ii) Acts or practices constituting a statutory disqualification of a type defined in subparagraph (iv) or (v) (except prior convictions) of section 3(a)(39) of the Act.

However, if a registered clearing agency fee schedule specifies certain charges for errors made by its participants in giving instructions to the registered clearing agency which are de minimis on a per error basis and whose purpose is in part to provide revenues to the registered clearing agency to compensate it for effort expended in beginning to process an erroneous instruction, such error charges shall not be considered a "final disciplinary action" for purposes of this paragraph.

(3) *Content of notice required by paragraph (g)(2).* Any notice filed pursuant to paragraph (g)(2) of this section shall consist of the following, as appropriate;

(i) The name of the respondent concerned together with the respondent's last known address as reflected on the records of the registered clearing agency and the name of the person, committee, or other organizational unit that brought the charges involved; except that, as to any respondent who has been found not to have violated a provision covered by a charge, identifying information with respect to such person may be deleted insofar as the notice reports the disposition of that charge and, prior to the filing of the notice, the respondent does not request that identifying information be included in the notice.

(ii) A statement describing the investigative or other origin of the action;

(iii) As charged in the proceeding, the specific provision or provisions of the rules of the registered clearing agency violated by such person or the statutory disqualification referred to in paragraph (g)(2)(ii) of this section and a statement describing the answer of the respondent to the charges;

(iv) A statement setting forth findings of fact with respect to any act or practice in which such respondent was charged with having engaged in or omitted; the conclusion of the registered clearing agency as to whether such respondent violated any rule or was subject to a statutory disqualification as charged; and a statement of the registered clearing agency in support of its resolution of the principal issues raised in the proceedings;

(v) A statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction has or will become effective; and

(vi) Such other matters as the registered clearing agency may deem relevant.

(4) *Notice of final denial, prohibition, termination or limitation based on qualification or administrative rules.* Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final action which denies participation to, or conditions the participation of, any person or prohibits or limits any person with respect to access to services offered by the clearing agency based on an alleged failure of such person to:

(i) Comply with the qualification standards prescribed by the rules of such registered clearing agency pursuant to section 17A(b)(4)(B) of the Act; or

(ii) Comply with any administrative requirements of such registered clearing agency (including failure to pay entry or other dues or fees or to file prescribed forms or reports) not involving charges of violations which may lead to a disciplinary sanction shall not considered a "final disciplinary action" for purposes of paragraph (g)(2) of this section, but notice thereof shall be promptly filed with the Board and the appropriate regulatory agency (if other than the Board) for the affected person in accordance with paragraph (g)(5) of this section; provided however, that no such action shall be considered "final" pursuant to this subparagraph that results merely from, a notice of such failure to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted his administrative remedies within the registered clearing agency with respect to such a matter.

(5) *Content of notice required by paragraph (g)(4).* Any notice filed pursuant to paragraph (g)(4) of this section shall consist of the following, as appropriate:

(i) The name of each person concerned together with each such person's last known address as reflected in the records of the registered clearing agency;

(ii) The specific grounds upon which the action of the registered clearing agency was based, and a statement describing the answer of the person concerned;

(iii) A statement setting forth findings of fact and conclusions as to each alleged failure of the person to comply with qualification standards, or comply with administrative obligations, and a statement of the registered clearing agncy in support of the resolution of the principal issues raised in the proceeding;

(iv) The date upon which such action has or will become effective; and

(v) Such other matters as the registered clearing agency deems relevant.

(6) *Notice of final action based upon prior adjudicated statutory disqualifications.* Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final action with respect to any person that:

(i) Denies or conditions participation to any person or prohibits or limits access to service offered by such registered clearing agency; and

(ii) Is based upon a statutory disqualification of a type defined in subparagraph (A), (B) or (C) of section 3(a)(39) of the Act of consisting of a prior conviction as described in subparagraph (E) of said section 3(a)(39) shall promptly file notice thereof with the Board and the appropriate regulatory agency (if other than the Board) for the affected person in accordance with paragraph (g)(7) of this section; provided, however, that no such action shall be considered "final" pursuant to this paragraph which results merely from a notice of such failure to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted his administrative remedies within the registered clearing agency with respect to such a matter.

(7) *Content of notice required by subparagraph (g)(6).* Any notice filed pursuant to paragraph (g)(6) of this section shall consist of the following, as appropriate:

(i) The name of the person concerned, together with each such person's last known address as reflected in the records of the registered clearing agency;

(ii) A statement setting forth the principal issues raised, the answer of any person concerned, and a statement of the registered clearing agency in support of its resolution of the principal issues raised in the proceeding;

(iii) Any description furnished by or on behalf of the person concerned of the activities engaged in by the person since the adjudication upon which the disqualification is based;

(iv) A copy of the order or decision of the court, the appropriate regulatory agency or the self-regulatory organization which adjudicated the matter giving rise to such statutory disqualification;

(v) The nature of the action taken and the date upon which such action is to be made effective; and

(vi) Such other matters as the registered clearing agency deems relevant.

(8) *Notice of summary suspension of participation.* Any registered clearing agency for which the Board is the appropriate regulatory agency that summarily suspends or closes the accounts of a participant pursuant to the provisions of section 17A(b)(5)(C) of the Act shall within one business day after the effectiveness of such action file notice thereof with the Board and the appropriate regulatory agency for the participant (if other than the Board) of such action in accordance with paragraph (g)(9) of this section.

(9) *Content of notice of summary suspension of participation.* Any notice pursuant to paragraph (g)(8) of this section shall contain at least the following information, as appropriate:

(i) The name of the participant concerned together with the participant's last known address as reflected in the records of the registered clearing agency;

(ii) The date upon which such summary action has or will become effective;

(iii) If such summary action is based upon the provisions of section 17A(b)(5)(C)(i) of the Act, a copy of the relevant order or decision of the self-regulatory organization if available to the registered clearing agency;

(iv) If such summary action is based upon the provisions of section 17A(b)(5)(C)(ii) of the Act, a statement describing the default of any delivery of funds or securities to the registered clearing agency;

(v) If such summary action is based upon the provisions of section 17A(b)(5)(C)(iii) of the Act, a statement describing the financial or operating difficulty of the participant based upon which the registered clearing agency determined that such suspension and closing of accounts was necessary for the protection of the clearing agency, its participants, creditors or investors;

(vi) The nature and effective date of the suspension; and

(vii) Such other matters as the registered clearing agency deems relevant.

(h) *Applications for stays of disciplinary sanctions or summary suspensions by a registered clearing agency.* If a registered clearing agency for which the Securities and Exchange Commission is not the appropriate regulatory agency imposes any final disciplinary sanction pursuant to section 17A(b)(3)(G) of the Act, or summarily suspends or limits or prohibits access pursuant to section 17A(b)(5)(C) of the Act, any participant aggrieved thereby for which the Board is the appropriate regulatory agency may file with the Board, by telegram or otherwise, a request for a stay of imposition of such action. Such request shall be in writing and shall include a statement as to why such stay should be granted.

(i) *Application for review of final disciplinary sanctions, denials of participation or prohibitions or limitations of access to services imposed by registered clearing agencies*—(1) *Scope.* Proceedings on an application to the Board under section 19(d)(2) of the Act by a person that is subject to the Board's jurisdiction for review of any action by a registered clearing agency for which the Securities and Exchange Commission is not the appropriate regulatory agency shall be governed by this paragraph.

(2) *Procedure.* (i) An application for review pursuant to section 19(d)(2) of the Act shall be filed with the Board within 30 days after notice is filed by the registered clearing agency pursuant to section 19(d)(1) of the Act and received by the aggrieved person applying for review, or within such longer period as the Board may determine. The Secretary of the Board shall serve a copy of the application on the registered clearing agency, which shall, within ten days after receipt of the application, certify and file with the Board one copy of the record upon which the action complained was taken, together with three copies of an index to such record. The Secretary shall serve upon the parties copies of such index and any papers subsequently filed.

(ii) Within 20 days after receipt of a copy of the index, the applicant shall file a brief or other statement in support of his application which shall state the specific grounds on which the application is based, the particular findings of the registered clearing agency to which objection is taken, and the relief sought. Any application not perfected by such timely brief or statement may be dismissed as abandoned.

(iii) Within 20 days after receipt of the applicant's brief or statement the registered clearing agency may file an answer thereto, and within 10 days of receipt of any such answer the applicant may file a reply. Any such papers not filed within the time provided by items (i), (ii), or (iii) will not be received except upon special permission of the Board.

(iv) On its own motion, the Board may direct that the record under review be supplemented with such additional evidence as it may deem relevant. Nevertheless, the registered clearing agency and persons who may be aggrieved by such clearing agency's action shall not be entitled to adduce evidence not presented in the proceedings before the registered clearing agency unless it is shown to the satisfaction of the Board that such additional evidence is material and that there were reasonable grounds for failure to present such evidence in the proceedings before the registered clearing agency. Any request for leave to adduce additional evidence shall be filed promptly so as not to delay the disposition of the proceeding.

(v) Oral argument before the Board may be requested by the applicant or the registered clearing agency as follows:

(A) By the applicant with his brief or statement or within 10 days after receipt of the registered clearing agency's answer; or

(B) By the registered clearing agency with its answer.

The Board, in its discretion, may grant or deny any request for oral argument and, where it deems it appropriate to do so, the Board will consider an application on the basis of the papers filed by the parties, without oral argument.

(vi) The Board's Rule of Practice for Formal Hearings shall apply to review proceedings under this rule to the extent that they are not inconsistent with this rule. Attention is directed particularly to § 263.21 of the Rules of Practice relating to formal requirements to the papers filed.

(j) *State member banks, and subsidiaries, departments, and divisions thereof, which are municipal securities dealers.* (1) For purposes of this paragraph, the terms herein have the meanings given them in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) and the rules of the Municipal Securities Rulemaking Board. The term Act shall mean the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(2) On and after October 31, 1977, a State member bank of the Federal Reserve System, or a subsidiary or a department or a division thereof, that is a municipal securities dealer shall not permit a person to be associated with it as a municipal securities principal or municipal securities representative unless it has filed with the Board an original and two copies of Form MSD-4, "Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer," completed in accordance with the instructions contained therein, for that person. Form MSD-4 is prescribed by the Board for purposes of paragraph (b) of Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons."

(3) Whenever a municipal securities dealer receives a statement pursuant to paragraph (c) of Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons," from a person for whom it has filed a Form MSD-4 with the Board pursuant to paragraph (j)(2) of this section, such dealer shall within ten days thereafter, file three copies of that statement with the Board accompanied by an original and two copies of a transmittal letter which includes the name of the dealer and a reference to the material transmitted identifying the person involved and is signed by a municipal securities principal associated with the dealer.

(4) Within thirty days after the termination of the association of a municipal securities principal or municipal securities representative with a municipal securities dealer that has filed a Form MSD-4 with the Board for that person pursuant to paragraph (j)(2) of this section, such dealer shall file an original and two copies of a notification of termination with the Board on Form MSD-5, "Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated With a Bank Municipal Securities Dealer," completed in accordance with instructions contained therein.

(5) A municipal securities dealer that files a Form MSD-4, Form MSD-5, or statement with the Board under this paragraph shall retain a copy of each such Form MSD-4, Form MSD-5, or statement until at least three years after the termination of the employment or other association with such dealer of the municipal securities principal or municipal securities representative to whom the form or statement relates.

(6) The date that the Board receives a Form MSD-4, Form MSD-5, or statement filed with the Board under this paragraph shall be the date of filing. Such a form MSD-4, Form MSD-5, or statement which is not prepared and executed in accordance with the applicable requirements may be returned as unacceptable for filing. Acceptance for filing shall not constitute any finding that a Form MSD-4, Form MSD-5 or statement has been completed in accordance with the applicable requirements or that any information reported therein is true, current, complete, or not misleading. Every Form MSD-4, Form MSD-5, or statement filed with the Board under this paragraph shall constitute a filing with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act (15 U.S.C. 78q(c)(1)) and a "report," "application," or "document" within the meaning of section 32(a) of the Act (15 U.S.C. 78ff(a)).

(k) *Recordkeeping and confirmation of certain securities transactions effected by State member banks.* (1) *Definitions:* For purposes of this paragraph (k):

(i) "Customer" shall mean any person or account, including any agency, trust, estate, guardianship, committee or other fiduciary account, for which a State member bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, dealer bank or issuer of the securities which are the subject of the transactions;

(ii) "Collective investment fund" means funds held by a State member bank as fiduciary and, consistent with local law, invested collectively (A) in a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act, or (B) in a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code;

(iii) A bank shall be deemed to exercise "investment discretion" with respect to an account if, directly or indirectly, the bank (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, or (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions;

(iv) "Periodic plan" (including dividend reinvestment plans, automatic investment plans and employee stock purchase plans) means any written authorization for a State member bank acting as agent to purchase or sell for a customer a specific security or securities, in specific amounts (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals and setting forth the commission or charges to be paid by the customer in connection therewith or the manner of calculating them;

(v) "Security" means any interest or instrument commonly known as a "security", whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. The term "security" does not include (A) a deposit or share account in a federally or state insured depository institution, (B) a loan participation, (C) a letter of credit or other form of bank indebtedness incurred in the ordinary course of business, (D) currency, (E) any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited, (F) units of a collective investment fund, (G) interests in a variable amount (master) note of a borrower of prime credit, or (H) U.S. Savings Bonds.

(2) *Recordkeeping:* Every State member bank effecting securities transactions for customers shall maintain the following records with respect to such transactions for at least three years:

(i) Chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show the account or customer for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the broker/dealer or other person from whom purchased or to whom sold;

(ii) Account records for each customer which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all receipts and disbursements of cash with respect to transactions in securities for such account and all other debits and credits pertaining to transactions in securities;

(iii) A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or cancelled), which shall include:

(A) The account(s) for which the transaction was effected;

(B) Whether the transaction was a market order, limit order, or subject to special instructions;

(C) The time the order was received by the trader or other bank employee responsible for effecting the transaction;

(D) The time the order was placed with the broker/dealer, or if there was no broker/dealer, the time the order was executed or canceled;

(E) The price at which the order was executed; and

(F) The broker/dealer utilized;

(iv) A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each such broker during the calendar year.

Nothing contained in this subparagraph shall require a bank to maintain the records required by this rule in any given manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information.

(3) *Form of notification:* Every State member bank effecting a securities transaction for a customer shall maintain for at least three years and, except as provided in subparagraph (4), shall mail or otherwise furnish to such customer either of the following types of notifications:

(i)(A) A copy of the confirmation of a broker/dealer relating to the securities transaction; and (B) if the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank and the customer, a statement of the source and the amount of any remuneration to be received; or

(ii) A written notification disclosing:

(A) The name of the bank;

(B) The name of the customer;

(C) Whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;

(D) The date of execution and a statement that the time of execution will be furnished within a reasonable time upon written request of such customer, and the identity, price and number of shares or units (or principal amount in the case of debt securities) of such security purchased or sold by such a customer;

(E) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;

(F) The amount of any remuneration received or to be received by the bank from the customer and the source and amount of any other remuneration to be received by the bank in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer, provided, however, in the case of U.S. Government securities, Federal agency obligations and municipal obligations, this subparagraph (f) shall apply only with respect to remuneration received by the bank in an agency transaction; and

(G) The name of the broker/dealer utilized; or, where there is no broker/dealer, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request.

(4) *Time of notification:* The time for mailing or otherwise furnishing the written notification described in paragraph (k)(3) of this section shall be 5 business days from the date of the transaction, or if a broker/dealer is utilized, within 5 business days from the receipt by the bank of the broker/dealer's confirmation, but the bank may elect to use the following alternative procedures if the transaction is effected for:

(i) Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the notification; provided, however, that such agreement makes clear the customer's right to receive the written notification within the above prescribed time period at no additional cost to the customer;

(ii) Accounts (except collective investment funds) where the bank exercises investment discretion in other than an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, mail or otherwise furnish to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information.

(iii) Accounts, where the bank exercises investment discretion in an agency capacity, in which instance (A) the bank shall mail or otherwise furnish to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's accounts during such period, and (B) if requested by the customer, the bank shall mail or otherwise furnish to each such customer within a reasonable time the written notification described in paragraph (k)(3) of this section. The bank may charge a reasonable fee for providing the information described in paragraph (k)(3) of this section.

(iv) A collective investment fund, in which instance the bank shall at least annually furnish a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be funished upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each particpating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank.

(v) A periodic plan, in which instance the bank shall mail or otherwise furnish to the customer as promptly as possible after each transaction a written statement showing the funds and securities in the custody or possession of the bank, all service charges and commissions paid by the customer in connection with the transaction, and all other debits and credits of the customer's account involved in the transaction; provided that upon the written request of the customer the bank shall furnish the information described in subparagraph (3), except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when paid by a source other than the customer. The bank may charge a reasonable fee for providing the information described in subparagraph (3).

(5) *Securities trading policies and procedures:* Every State member bank effecting securities transactions for customers shall establish written policies and procedures providing:

(i) Assignment of responsibility for supervision of all officers or employees who (A) transmit orders to or place orders with broker/dealers, or (B) execute transactions in securities for customers;

(ii) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are recieved at approximately the same time and are placed for execution either individually or in combination;

(iii) Where applicable and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction; and

(iv) That bank officers and employees who make investment recommendations or decisions for the accounts of customers, who participate in the determination of such recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for such action, must report to the bank, within ten days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales. Excluded from this requirement are transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control, transactions in mutual fund shares, and all transactions involving in the aggregate $10,000 or less during the calendar quarter. For purposes of this paragraph (k)(iv) of this section, the term "securities" does not include U.S. Government or Federal agency obligations.

(6) *Exceptions:* The following exceptions to subparagraph (k) shall apply:

(i) The requirements of paragraphs (k)(2)(ii) through (k)(2)(iv) and paragraphs (k)(5)(i) through (k)(5)(iii) of this section shall not apply to banks having an average of less than 200 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in U.S. government and federal agency obligations;

(ii) Activities of a State member bank that are subject to regulations promulgated by the Municipal Securities Rulemaking Board shall not be subject to the requirements of this paragraph (k); and

(iii) Activities of foreign branches of a State member bank shall not be subject to the requirements of this paragraph (k).

APPENDIX A—SAMPLE NOTICES

(1) *Notice to Borrower of Special Flood-Hazards*—Notice is hereby given to ——— that the improved real estate or mobile home described in the attached instrument is or will be located in an area designated by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. This area is delineated on ———'s Flood Insurance Rate Map ("FIRM") or, if the FIRM is unavailable, on the community's Flood Hazard Boundary Map ("FHBM"). This area has a 1 percent chance of being flooded within any given year. The risk of exceeding the 1 percent chance increases with time periods longer than 1 year. For example, during the life of a 30-year mortgage, a structure located in a special flood-hazardous area has a 26 percent chance of being flooded.

(2) *Notice to Borrower about Federal Disaster Relief Assistance*—(a) *Notice in participating communities.* The improved real estate or mobile home securing your loan is or will be located in a community that is now participating in the National Flood Insurance program. In the event such property is damaged by flooding in a federally-declared disaster, Federal disaster relief assistance may be available. However, such assistance will be unavailable if your community has been identified as a special flood-hazardous area for one year or longer and is not participating in the National Flood Insurance Program at the time assistance would be approved. This assistance, usually in the form of a loan with a favorable interest rate, may be available for damages incurred in excess of your flood insurance.

(b) *Notice in non-participating communities.* The improved real estate or mobile home securing your loan is or will be located in a community that is not participating in the National Flood Insurance program. This means that such property is not eligible for Federal flood insurance. In the event such property is damaged by flooding in a federally-declared disaster, Federal disaster relief assistance will be unavailable if your community has been identified as a special flood-hazardous area for 1 year or longer. Such assistance may be available only if at the time assistance would be approved your community is participating in the National Flood Insurance program or has been identified as a special flood-hazardous area for less than 1 year.

(15 U.S.C. 78b, 78o-4(c)(5), 78q, 78q-1, 78w) (12 U.S.C. 248(a))

[39 FR 5482, Feb. 13, 1974]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 208.8, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 208.9 Establishment or maintenance of branches.

(a) *In general.* Every State bank which is or hereafter becomes a member of the Federal Reserve System is subject to the provisions of section 9 of the Federal Reserve Act relating to the establishment and maintenance of branches[1] in the United States or in a dependency or insular possession thereof or in a foreign country. Under the provisions of section 9, member State banks establishing and operating branches in the United States beyond the corporate limits of the city, town, or village in which the parent bank is situated must conform to the same terms, con-

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[1] Section 5155 of the Revised Statutes of the United States provides that: "(f) The term 'branch' as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent."

s, limitations, and restrictions as
oplicable to the establishment of
hes by national banks under the
sions of section 5155 of the Re-
Statutes of the United States re-
to the establishment of
hes in the United States, except
the approval of any such
hes must be obtained from the
d rather than from the Comptrol-
f the Currency. The approval of
Board must likewise be obtained
e any member State bank estab-
s any branch after July 15, 1952,
n the corporate limits of the city,
, or village in which the parent
is situated (except within the
ict of Columbia). Under the pro-
ns of section 9, member State
s establishing and operating
ches in a dependency or insular
ession of the United States or in a
gn country must conform to the
s, conditions, limitations, and re-
tions contained in section 25 of
Federal Reserve Act relating to
establishment by national banks
ranches in such places.

Branches in the United States.
Before a member State bank estab-
es a branch (except within the Dis-
of Columbia), it must obtain the
roval of the Board.

Before any nonmember State
k having a branch or branches es-
ished after February 25, 1927,
ond the corporate limits of the
, town, or village in which the
k is situated is admitted to mem-
ship in the Federal Reserve
tem, it must obtain the approval of
Board for the retention of such
nches.

) A member State bank located in
tate which by statute law permits
maintenance of branches within
nty or greater limits may, with the
roval of the Board, establish and
rate, without regard to the capital
uirements of section 5155 of the
vised Statutes, a seasonal agency in
resort community within the
its of the county in which the main
ice of such bank is located for the
rpose of receiving and paying out
posits, issuing and cashing checks
d drafts, and doing business incident
ereto, if no bank is located and
ing business in the place where the
proposed agency is to be located; and any permit issued for the establishment of such an agency shall be revoked upon the opening of a State or national bank in the community where the agency is located.

(4) Except as stated in paragraph (b)(3) of this section, in order for a member State bank to establish a branch beyond the corporate limits of the city, town, or village in which it is situated, the aggregate capital stock of the member State bank and its branches shall at no time be less than the aggregate minimum capital stock required by law for the establishment of an equal number of national banking associations situated in the various places where such member State bank and its branches are situated.[a]

(5) A member State bank may not establish a branch beyond the corporate limits of the city, town, or village in which it is situated unless such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition.

(6) Any member State bank which, on February 25, 1927, had established and was actually operating a branch or branches in conformity with the State law is permitted to retain and operate the same while remaining a member of the Federal Reserve System, regardless of the location of such branch or branches.

(7) The removal of a branch of a member State bank from one town to another town constitutes the establishment of a branch in such other town and, accordingly, requires the approval of the Board. The removal of a

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[a] The requirement of this paragraph is met if the aggregate capital stock of a member State bank having branches is not less than the total amount of capital stock which would be required for the establishment of one national bank in each of the places in which the head office and branches of the member State banks are located, irrespective of the number of offices which the bank may have in any such place. There are no additional capital requirements for additional branches within the city, town, or village in which the head office is located.

branch of a member State bank from one location in a town to another location in the same town will require the approval of the Board if the circumstances of the removal are such that the effect thereof is to constitute the establishment of a new branch as distinguished from the mere relocation of an existing branch in the immediate neighborhood without affecting the nature of its business or customers served.

(c) *Application for approval of branches in United States.* Any member State bank desiring to establish a branch should submit a request for the approval by the Board of any such branch to the Federal Reserve Bank of the district in which the bank is located. Any nonmember State bank applying for membership and desiring to retain any branch established after February 25, 1927, beyond the corporate limits of the city, town, or village in which the bank is situated should submit a similar request. Any such request should be accompanied by advice as to the scope of the functions and the character of the business which are or will be performed by the branch and detailed information regarding the policy followed or proposed to be followed with reference to supervision of the branch by the head office; and the bank may be required in any case to furnish additional information which will be helpful to the Board in determining whether to approve such request.

(d) *Foreign branches.* With prior Board approval, a member state bank having capital and surplus of $1,000,000 or more may establish branches in "foreign countries", as defined in § 211.2(f) of Regulation K (12 CFR 211.2(f)). If a member State bank has established a branch in such a country, it may, unless otherwise advised by the Board, establish other branches therein after 30 days' notice to the Board with respect to each such branch.

[Reg. H, 17 FR 8006, Sept. 4, 1952, as amended at 28 FR 8361, Aug. 15, 1963. Redesignated at 39 FR 5482, Feb. 13, 1974 and amended at 47 FR 19321, May 5, 1982]

§ 208.10 Publication of reports of member banks and their affiliates.[9]

(a) *Reports of member banks.* (1) Each report of condition made by a member State bank to its Federal Reserve Bank pursuant to a call therefor by the Board shall be published by such member bank within 20 days from the date the call is issued, unless such time is extended by the Reserve Bank as provided in § 265.2(f)(16) of this chapter (Rules Regarding Delegation of Authority).

(2) The report shall be printed in a newspaper published in the place where the bank is located or, if there be no newspaper published in the place where the bank is located, then in a newspaper published in the same or in an adjoining country and in general circulation in the place where the bank is located. The term "newspaper", for the purpose of this part, means a publication with a general circulation published not less frequently than once a week, one of the primary functions of which is the dissemination of news of general interest.

(3) The copy of the report for the use of the printer for publication should be prepared on the form supplied or authorized for the purpose by the Federal Reserve Bank. Except as permitted in the instructions for preparation of reports of condition (Form FR 105a), the published information

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[9] Under the provisions of section 9 of the Federal Reserve Act, reports of condition of member State banks which, under that section, must be made to the respective Federal Reserve Banks on call dates fixed by the Board of Governors of the Federal Reserve System "shall be published by the reporting banks in such manner and in accordance with such regulations as the said Board may prescribe."

Section 9 also provides that the reports of affiliates of a member State bank which are required by that section to be furnished to the respective Federal Reserve Banks "shall be published by the Bank under the same conditions as govern its own condition reports". The term "affiliates", as used in this provision of section 9, under the express terms of that section, includes "holding company affiliates as well as other affiliates", but a member State bank is not required to furnish to a Federal Reserve Bank the report of an affiliated member bank.

all agree in every respect with that
own on the face of the report of
ndition submitted to the Federal Re-
rve Bank. All signatures shall be the
me in the published statement as in
e original report submitted to the
deral Reserve Bank, but the signa-
res may be typewritten or otherwise
pied on the report for publication.

4) A copy of the printed report
all be submitted to the Federal Re-
rve Bank attached to the certificate
the form supplied or authorized for
e purpose by the Federal Reserve
nk.

b) *Reports of affiliates.*[10] (1) If re-
rts of affiliates are requested by the
ard of Governors of the Federal Re-
rve System, each report of an affili-
e of a member State bank, including
holding company affiliate, shall be
blished at the same time and in the
me newspaper as the affiliated
nk's own condition report submitted
the Federal Reserve Bank, unless
extension of time for submission of
e report of the affiliate has been
anted under authority of the Board
Governors of the Federal Reserve
stem. When such extension of time
s been granted, the report of the af-
iate must be submitted and pub-
hed before the expiration of such
tended period in the same newspa-
r as the condition report of the
nk was published.

2) The copy of the report for the
e of the printer for publication
ould be prepared on Form FR 220a.
ne published information shall agree
every respect with that shown on the face of the report of the affiliate furnished to the Federal Reserve Bank by the affiliated member bank, except that any item appearing under the caption "Financial relations with bank" against which the word "none" appears on the report furnished to the Federal Reserve Bank may be omitted in the published statement of the affiliate: *Provided,* That if the word "none" is shown against all of the items appearing under such caption in the report furnished to the Federal Reserve Bank the caption "Financial relations with bank" shall appear in the published statement followed by the word "none."

(3) A copy of the printed report shall be submitted to the Federal Reserve Bank attached to the certificate on Form FR 220a.

(c) *Waiver of reports of affiliates.* Pursuant to section 21 of the Federal Reserve Act (12 U.S.C. 486), the Board of Governors of the Federal Reserve System waives the requirement for the submission of reports of affiliates of State bank members of the Federal Reserve System, unless such reports are specifically requested by the Board of Governors. The Board of Governors of the Federal Reserve System may require the submission of reports which are necessary to disclose fully relations between member banks and their affiliates and the effect thereof upon the affairs of member banks.

[Reg. H, 17 FR 8006, Sept. 4, 1952, as amended at 34 FR 5928, Mar. 29, 1969; 39 FR 788, Jan. 3, 1974; 39 FR 1974, Jan. 16, 1974. Redesignated at 39 FR 5482, Feb. 13, 1974]

§ 208.11 Voluntary withdrawal from Federal Reserve System.

(a) *General.* Any State bank desiring to withdraw from membership in a Federal Reserve Bank may do so after six months' written notice has been filed with the Board;[11] and the Board,

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Section 21 of the Federal Reserve Act,
ong other things, provides as follows:
Whenever member banks are required to
tain reports from affiliates, or whenever
filiates of member banks are required to
bmit to examination, the Board of Gover-
rs of the Federal Reserve System or the
mptroller of the Currency, as the case
y be, may waive such requirements with
spect to any such report or examination
any affiliate if in the judgment of the
d Board or Comptroller, respectively,
ch report or examination is not necessary
disclose fully the relations between such
filiate and such bank and the effect there-
upon the affairs of such bank." In any
e where the Board has waived the filing
a report of an affiliate, no publication of
eport of an affiliate is required.

[11] Under specific provisions of section 9 of the Federal Reserve Act, however, no Federal Reserve Bank shall, except upon express authority of the Board, cancel within the same calendar year more than twenty-five percent of its capital stock for the purpose of effecting voluntary withdrawals during

Continued

in its discretion, may waive such six months' notice in any individual case and may permit such bank to withdraw from membership in a Federal Reserve Bank, subject to such conditions as the Board may prescribe, prior to the expiration of six months from the date of the written notice of its intention to withdraw.

(b) *Notice of intention of withdrawal.* (1) Any State bank desiring to withdraw from membership in a Federal Reserve Bank should signify its intention to do so, with the reasons therefor, in a letter addressed to the Board and mailed to the Federal Reserve Bank of which such bank is a member. Any such bank desiring to withdraw from membership prior to the expiration of six months from the date of written notice of its intention to withdraw should so state in the letter signifying its intention to withdraw and should state the reason for its desire to withdraw prior to the expiration of six months.

(2) Every notice of intention of a bank to withdraw from membership in the Federal Reserve System and every application for the waiver of such notice should be accompanied by a certified copy of a resolution duly adopted by the board of directors of such bank authorizing the withdrawal of such bank from membership in the Federal Reserve System and authorizing a certain officer or certain officers of such bank to file such notice or application, to surrender for cancellation the Federal Reserve Bank stock held by such bank, to receive and receipt for any moneys or other property due to such bank from the Federal Reserve Bank and to do such other things as may be necessary to effect the withdrawal of such bank from membership in the Federal Reserve System.

(3) Notice of intention to withdraw or application for waiver of six months' notice of intention to withdraw by any bank which is in the hands of a conservator or other State official acting in a capacity similar to that of a conservator should be accompanied by advice from the conservator or other such State official that he joins in such notice or application.

(c) *Time and method of effecting actual withdrawal.* Upon the expiration of six months after notice of intention to withdraw or upon the waiving of such six months' notice by the Board, such bank may surrender its stock and its certificate of membership to the Federal Reserve Bank and request that same be canceled and that all amounts due to it from the Federal Reserve Bank be refunded.[13] Unless withdrawal is thus effected within eight months after notice of intention to withdraw is first given, or unless the bank requests and the Board grants an extension of time, such bank will be presumed to have abandoned its intention of withdrawing from membership and will not be permitted to withdraw without again giving six months' written notice or obtaining the waiver of such notice.

(d) *Withdrawal of notice.* Any bank which has given notice of its intention to withdraw from membership in a Federal Reserve Bank may withdraw such notice at any time before its stock has been canceled and upon doing so may remain a member of the

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that year. All applications for voluntary withdrawals are required by the law to be dealt with in the order in which they are filed with the Board.

[13] A bank's withdrawal from membership in the Federal Reserve System is effective on the date on which the Federal Reserve Bank stock held by it is duly canceled. Until such stock has been canceled, such bank remains a member of the Federal Reserve System, is entitled to all the privileges of membership, and is required to comply with all provisions of law and all regulations of the Board pertaining to member banks and with all conditions of membership applicable to it. Upon the cancellation of such stock, all rights and privileges of such bank as a member bank shall terminate.

Upon the cancellation of such stock, and after due provision has been made for any indebtedness due or to become due to the Federal Reserve Bank, such bank shall be entitled to a refund of its cash paid subscription with interest at the rate of one-half of one percent per month from the date of last dividend, the amount refunded in no event to exceed the book value of the stock at that time, and shall likewise be entitled to the repayment of deposits and of any other balance due from the Federal Reserve Bank.

ral Reserve System. The notice
nding the former notice should be
mpanied by a certified copy of an
opriate resolution duly adopted
he board of directors of the bank.

H, 17 FR 8006, Sept. 4, 1952. Redesig-
at 39 FR 5482, Feb. 13, 1974]

12 Board forms.

forms referred to in this part and
ich forms as they may be amend-
om time to time shall be a part of
egulations in this part.

H, 17 FR 8006, Sept. 4, 1952. Redesig-
at 39 FR 5482, Feb. 13, 1974]

13 Capital adequacy.

e standards and guidelines by
h the capital adequacy of state
ber banks will be evaluated by the
d are set forth in Appendix A to
Board's Regulation Y, 12 CFR
225.

R 16066, Apr. 24, 1985]

INTERPRETATIONS

**110 "Messenger service" provided by
tate member banks.**

The Board of Governors has
asked whether an arrangement
r which a State member bank
des "messenger service" for a cus-
r, subject to an agreement that
messenger acts as agent for the
omer, would involve the operation
branch by the bank.

Section 9 of the Federal Reserve
12 U.S.C. 321) provides, in effect,
a State member bank, if permit-
o do so by State law, may estab-
branches on the same terms and
itions and subject to the same
ations and restrictions as are ap-
ble to the establishment of
ches by national banks, except
the approval of the Board of Gov-
rs, instead of the Comptroller of
Currency, shall be obtained before
anch may be established by a
member bank. It is apparent
it was the intent of Congress that
onal banks and State member
s should have substantially equal
rtunity to establish branches.

Section 5155 of the Revised Stat-
(12 U.S.C. 36), relating to
ches of national banks, provides that the term "branch" shall be held to "include any branch bank, branch office, branch agency, additional office, or any branch place of business * * * at which deposits are received, or checks paid, or money lent."

(d) Whether any of the banking transactions described in the law, or other banking transactions, are conducted at an "additional office" or other "place of business" can be determined only on the basis of particular factual situations. The question here presented refers only to "messenger service" provided by the Bank, without any indication of the purpose of the service or the exact circumstances in which it would be provided.

(e) It is assumed, however, that the service in question would involve picking up deposits at the respective addresses of particular customers and the payment of checks drawn by such customers on the bank; that the "messenger" normally would be an armored car owned by the bank or by an independent contractor; that the cost of the service would be borne by the bank; that, in the case of deposits, there would be a written agreement between the bank and the customer under which the messenger would act as agent of the customer and the bank would assume no liability for the funds collected until they were received by it from the messenger at the bank's premises; and that, in the case of payment of checks, the checks would be presented at the bank's premises by the messenger acting as agent of the customer and the proceeds received by the messenger for transmittal to the customer, with no liability on the part of the bank for such proceeds after their delivery to the messenger.

(f) Assuming the facts to be as stated above, the Board does not regard such arrangements as involving the establishment and operation of branches by State member banks. Whether the use of messenger service in other circumstances would constitute branch banking would, of course, have to be determined on the basis of the facts involved.

(12 U.S.C. 36)

[29 FR 7816, June 19, 1964]

§ 208.116 Sale of bank's money orders off premises as establishment of branch office.

(a) The Board of Governors has been asked to consider whether the appointment by a State member bank of an agent to sell the bank's money orders, at a location other than the premises of the bank, constitutes the establishment of a branch office.

(b) Section 5155 of the Revised Statutes (12 U.S.C. 36), which is also applicable to State member banks, defines the term "branch" as including "any branch bank, branch office, branch agency, additional office, or any branch place of business * * * at which deposits are received, or checks paid, or money lent." The basic question is whether the sale of a bank's money orders by an agent amounts to the receipt of "deposits" at a "branch place of business" within the meaning of this statute.

(c) Money orders are classified as deposits for certain purposes. However, they bear a strong resemblance to traveler's checks that are issued by banks and sold off premises. In both cases, the purchaser does not intend to establish a deposit account in the bank, although a liability on the bank's part is created. Even though they result in a deposit liability, the Board is of the opinion that the issuance of a bank's money orders by an authorized agent does not involve the receipt of deposits at a "branch place of business" and accordingly does not require the Board's permission to establish a branch.

(d) Banks engaging in this practice should, of course, exercise the utmost discretion in choosing agents to sell the bank's money orders. It has been suggested that the agents be bonded, their authority be limited, and proceeds of the sales be remitted daily. Also the bank's blanket bond might be amended to provide protection if the present provisions are inadequate.

(12 U.S.C. 36)

[30 FR 3525, Mar. 17, 1965]

§ 208.117 Mobile branches.

The Board of Governors was recently requested by a State member bank to approve the operation of mobile offices at designated out-of-town locations. These offices would be stationed at such locations on certain days and hours each week. Section 5155 of the Revised Statutes (12 U.S.C. 36), which is made applicable by section 9 of the Federal Reserve Act to the establishment of branches by State member banks, defines the term "branch" as any "place of business * * * at which deposits are received or checks paid, or money lent." Accordingly, the Board concluded that as each location would be a place of business at which some or all of such activities would be conducted, permission to establish branches was required. Such offices may only be approved by the Board when State statute permits branch banking at such locations. The approval of the State authorities had been obtained and the Board approved the establishment of branches at these locations.

(12 U.S.C. 36)

[30 FR 14552, Nov. 23, 1965]

§ 208.122 Loan "Production Offices" as branches.

For text of interpretation relating to this subject, see § 250.141 of this chapter.

(12 U.S.C. 36, 321)

[Reg. H, 33 FR 11812, Aug. 21, 1968]

§ 208.123 Purchase of shares of a money market mutual fund whose portfolio consists wholly of securities that the member bank may purchase directly.

(a) The National Bank Act provides that a national bank may purchase for its own account investment securities under limitations and restrictions as the Comptroller may prescribe (12 U.S.C. 24, ¶ 7). The statute defines investment securities to mean marketable obligations evidencing indebtedness of any person in the form of bonds, notes, and debentures. The Act further limits a national bank's holdings of any one security to no more than an amount equal to 10 percent of the bank's capital stock and surplus. However, these limitations do not apply to obligations issued by the United States, general obligations of any state and certain obligations of federal agencies. In addition, with certain limited exceptions, a national bank is not permitted to purchase for its own account stock of any corporation. These restrictions also apply to state member banks (12 U.S.C. 335).

(b) The Comptroller of the Currency has permitted national banks to purchase for their own accounts shares of open-end investment companies that are purchased or sold at par (i.e., money market mutual funds) provided the portfolios of such companies consist solely of securities that a national bank may purchase directly.

(c) The Board of Governors has determined to permit state member banks to purchase shares of money market mutual funds ("MMMF") whose portfolios consist solely of securities that the state member bank may purchase directly. The purchase by a state member bank of shares of such a MMMF is functionally equivalent to the bank's purchase of the securities that comprise the portfolio of the MMMF. A bank that purchases shares of a MMMF acquires an undivided equitable ownership interest in the securities that comprise the MMMF portfolio. Moreover, purchase of shares of such a MMMF would not result in speculative risks or wide fluctuations because the bank currently may purchase directly the assets comprising the MMMF portfolio and because of the rules of the Securities and Exchange Commission concerning MMMFs. Indeed, by providing greater scope for diversification, particularly for smaller banks, allowing the purchase of such MMMF shares may contribute to lower risk than purchase by the state member bank of the assets comprising the MMMF portfolio directly.

(d) The Board has adopted the following conditions, similar to those adopted by the Comptroller of the Currency for national banks, to ensure that in those cases in which a state member bank may purchase securities in limited amounts, the bank does not exceed the limitations indirectly through the purchase of MMMF shares:

(1) The fund is an open-end investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and Securities Act of 1933 or a privately offered fund sponsored by an affiliated commercial bank.[2]

(2) When the fund's assets consist solely of and are limited to obligations that are eligible for investment without limit by a state member bank, there is no limit on the bank's investment. But where the fund contains securities subject to the bank's investment or lending limitations, investment in the MMMF may not exceed these investment or lending limitations. Where the state member bank purchases shares in more than one fund containing securities subject to the bank's investment or lending limitations, the bank's aggregate investment in such funds may not exceed these investment or lending limitations. Where the state member bank purchases such securities directly, the aggregate maximum allowable investment in such MMMF(s) is reduced accordingly.

(3) The fund's shares are bought and sold at par (i.e., the fund is a money market fund).

(4) The shareholder has an equitable and equal proportionate undivided interest in the underlying assets of the fund.

(5) Shareholders are shielded from personal liability for acts or obligations of the fund.

(6) The bank's investment policy, as formally approved by its board of directors, specifically provides for such investments; prior approval of the board of directors is obtained for initial investments in specific funds and recorded in the official board minutes; and procedures, standards, and controls for the implementation of such investments are established.

(7) The bank conducts reviews at least monthly of its holdings of investment company shares to ensure that such investments are in accordance with the foregoing principles.

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[2] This provision concerning a privately offered fund sponsored by an affiliated commercial bank is a limited provision applicable only to a privately sponsored fund of a subsidiary of a holding company whose shares may be purchased only by other subsidiaries of the holding company.

(e) State member banks would also be subject to any other restrictions imposed by applicable state law.

[50 FR 13011, Apr. 2, 1985]

PART 209—ISSUE AND CANCELLATION OF CAPITAL STOCK OF FEDERAL RESERVE BANKS

Sec.

209.1 National bank in process of organization.
209.2 State bank becoming member.
209.3 Increase or decrease of capital or surplus.
209.4 Increase or decrease of deposits by mutual savings bank.
209.5 Merger or consolidation.
209.6 Conversion of national bank.
209.7 Insolvency.
209.8 Voluntary liquidation.
209.9 Other closed national banks.
209.10 Other closed State member banks.
209.11 Voluntary withdrawal from membership.
209.12 Involuntary termination of membership.
209.13 Cancellation of old and issue of new stock certificate.
209.14 Forms.

AUTHORITY: 12 U.S.C. 248, 321-338, 486, 1814, 1816.

SOURCE: Reg. I, 27 FR 12915, Dec. 29, 1962, unless otherwise noted.

§ 209.1 National bank in process of organization.

Each national bank,[1] while in process of organization,[2] shall file with the Federal Reserve Bank of its district an application on Form FR 30, and each nonmember State bank converting into a national bank,[3] shall file an application on Form FR 30a, for an amount of capital stock of the Federal Reserve Bank of its district equal to six percent of the paid-up[4] capital and surplus of such national bank. If the application is found to be in proper form it will be approved by the Federal Reserve Bank effective if and when the Comptroller of the Currency issues to such bank his certificate of authority to commence business. Upon approval, the applying bank shall thereupon[5] pay the Federal Reserve Bank of its district one-half of the amount of its subscription and, upon receipt of advice from the Federal Reserve Bank as to the required amount, one-half of one per cent of its paid-up subscription for each month from the period of the last dividend, and upon receipt of the payment for Federal Reserve Bank stock the Federal Reserve Bank will issue a receipt therefor, place the amount in a suspense account, and notify the Comptroller of the Currency that it has been received. When the Comptroller of the Currency issues his certificate of authority to commence business the Federal Reserve Bank will issue a stock certificate as of the date upon which the bank opens for business. The remaining half of the subscription of the applying bank will be subject to call when deemed necessary by the Board of Governors of the Federal Reserve System.

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[1] Under the provisions of section 19 of the Federal Reserve Act (12 U.S.C. 466), national banks located in a dependency or insular possession or any part of the United States outside the States of the United States and the District of Columbia are not required to become members of the Federal Reserve System but may, with the consent of the Board, become members of the System. Any such bank desiring to be admitted to the System under the provisions of section 19 should communicate with the Federal Reserve Bank with which it desires to do business.

[2] A new national bank with no capital or board of directors which is organized by the Federal Deposit Insurance Corporation pursuant to the provisions of section 11(h) of the Federal Deposit Insurance Act (12 U.S.C. 1821(h)), should not apply for stock of the Federal Reserve Bank of its district until it is in process of organization as a national bank with capital pursuant to the provisions of section 11(k) of the Federal Deposit Insurance Act (12 U.S.C. 1821(k)).

[3] Whenever a State member bank is converted into a national bank under section 5154 of the Revised Statutes (12 U.S.C. 35), it may continue to hold as a national bank its shares of Federal Reserve Bank stock previously held as a State member bank. If the aggregate amount of its capital and surplus is increased or decreased, the national bank shall file an application on Form FR 56, as provided in § 209.3, for additional shares of Federal Reserve Bank stock or for cancellation of Federal Reserve Bank stock. The certificate of stock issued in the name of the State member bank shall be surrendered and canceled, and a new certificate will be issued in lieu thereof in the name of the national bank, as provided in § 209.13.

[4] Subscriptions to the capital stock of the Federal Reserve Bank must be made in an amount at least equal to six per cent of the amount of the capital and surplus of the applying bank which is to be paid in at the time the Comptroller of the Currency authorizes it to commence business. In order to avoid the necessity of making applications for additional stock in the Federal Reserve Bank, as additional installments of the capital and surplus of the applying bank are paid in, application may be made for stock in the Federal Reserve Bank in an amount equal to six percent of the authorized capital of the applying bank, plus six per cent of the amount of surplus, if any, which the subscribers to the capital of the applying bank have agreed to pay in.

[5] Payment may be made, if desired, at any time prior to approval of the application.

§ 209.2 State bank becoming member.

Any State bank, Morris Plan bank, or mutual savings bank, desiring to become a member of the Federal Reserve System shall make application as provided in Part 208 of this chapter (Regulation H) and, when such application has been approved by the Board of Governors of the Federal Reserve System and all applicable requirements have been complied with, the Federal Reserve Bank will issue an appropriate certificate of Federal Reserve Bank stock as provided in § 208.5(b) of this chapter.

§ 209.3 Increase or decrease of capital or surplus.

Whenever any member bank increases or decreases the aggregate amount of its paid-up capital and surplus,[6] it shall file with the Federal Reserve Bank of its district an application on Form FR 56 for such additional amount or for the cancellation of such amount, as the case may be, of the capital stock of the Federal Reserve Bank of its district as may be necessary to make its total subscription to Federal Reserve Bank stock equal to six percent of its combined capital and surplus. After an application for additional Federal Reserve Bank stock has been approved by the Federal Reserve Bank, the applying member bank shall pay to the Federal Reserve Bank of its district one-half of its additional subscription, plus one-half of one percent a month from the period of the last dividend on such Federal Reserve Bank stock, whereupon the appropriate certificate of stock will be issued by the Federal Reserve Bank. The remaining half of such additional subscription will be subject to call when deemed necessary by the Board of Governors of the Federal Reserve System. After an application for cancellation of Federal Reserve Bank stock has been approved, the Federal Reserve Bank will accept and cancel the stock which the applying bank is required to surrender, and will pay to the member bank a sum equal to all cash paid subscriptions made on the stock canceled plus one-half of one percent a month from the period of the last dividend, not to exceed the book value thereof.

§ 209.4 Increase or decrease of deposits by mutual savings bank.

Whenever, as shown by the last report of condition as of a date preceding January 1 or July 1 of each year, the total deposit liabilities of a mutual savings bank which is a member of the Federal Reserve System have increased or decreased since the last adjustment of its holdings of Federal Reserve Bank stock, the bank shall file with the Federal Reserve Bank of its district an application on Form FR 56a for such additional amount or for the cancellation of such amount, as the case may be, of Federal Reserve Bank stock of its district as may be necessary to make its total subscription to Federal Reserve Bank stock equal to six-tenths of one percent of its total deposit liabilities as shown by such last report of condition, and Federal Reserve Bank stock will be issued or canceled in the manner described in § 209.3. In the case of any mutual savings bank which is not permitted by the laws under which it was organized to purchase stock in the Federal Reserve Bank and has a deposit with the Federal Reserve Bank in lieu of such subscription, such deposit will be adjusted in the same manner as subscriptions for stock.

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[6] If a member bank sets up a reserve for dividends payable in common stock, such reserve will be regarded as surplus for the purpose of determining the amount of Federal Reserve Bank stock which the bank is required to hold, provided such reserve is established pursuant to a resolution of the board of directors, will become a part of the permanent capital of the bank, and will not be used for any other purpose than the payment of dividends in common stock.

§ 209.5 Merger or consolidation.

(a) Whenever two or more member banks merge or consolidate and such action results in the merged or consolidated bank acquiring by operation of law[7] the Federal Reserve Bank stock owned by the other bank or banks, and which also results in the merged or consolidated bank having an aggregate capital and surplus in excess of, or less than, the aggregate capital and surplus of the merging or consolidating member banks, such merged or consolidated bank shall, as provided in § 209.3, file with the Federal Reserve Bank of its district an application on Form FR 56 for such additional amount, or for the cancellation of such amount, as the case may be, of Federal Reserve Bank stock of its district as may be necessary to make its total subscription to Federal Reserve Bank stock equal to six percent of its combined capital and surplus. In any such case, the merged or consolidated bank shall surrender to the Federal Reserve Bank the certificates of Federal Reserve Bank stock held by the merged or consolidated bank and a new certificate will be issued as provided in § 209.13(b).

(b) Whenever a member bank merges or consolidates with a nonmember bank, under the charter of the latter bank, an application on Form FR 86a shall be filed with the Federal Reserve Bank for cancellation of Federal Reserve Bank stock held by the member bank. Upon approval of such application, the Federal Reserve Bank will cancel such stock as of the date the merger or consolidation takes effect, and will adjust accounts by applying to any indebtedness of the merging or consolidating bank to such Federal Reserve Bank all cash paid subscriptions made on the stock canceled plus one-half of one percent a month from the period of the last dividend, not to exceed the book value thereof, and the remainder, if any, will be paid to the merged or consolidated bank.

§ 209.6 Conversion of national bank.

Whenever a national bank converts into a nonmember State bank, an application on Form FR 86b shall be filed with the Federal Reserve Bank for cancellation of Federal Reserve Bank stock held by the national bank. Upon approval of such application, the Federal Reserve Bank will cancel such stock as of the date the conversion takes effect, and will adjust accounts in the manner described in § 209.5(b).

§ 209.7 Insolvency.

Whenever a member bank is declared insolvent and a receiver[8] appointed, the receiver shall, within three months from the date of his appointment, file with the Federal Reserve Bank of the district an application on Form FR 87 for cancellation of Federal Reserve Bank stock held by the insolvent member bank. If the receiver fails to make application within the time specified, the board of directors of the Federal Reserve Bank will either issue an order to cancel such stock, or, if the circumstances warrant it, grant the receiver additional time in which to file an application. Upon approval of such application or upon issuance of such order, the Federal Reserve Bank will cancel such stock as of the date of such approval or order and will adjust accounts in the manner described in § 209.5(b).

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[7] Section 5 of the Federal Reserve Act provides that "Shares of the capital stock of Federal Reserve Banks owned by member banks shall not be transferred or hypothecated." This provision prevents a transfer of Federal Reserve Bank stock by purchase, but does not prevent a transfer by operation of law. Where one member bank purchases all or a substantial portion of the assets of another member bank, the latter being placed in liquidation, it is necessary for the liquidating bank to surrender its Federal Reserve Bank stock, as provided in § 209.8, and for the purchasing bank, if its capital and surplus is increased or decreased, to adjust its holdings of Federal Reserve Bank stock as provided in § 209.3.

If the assets and obligations of a merging or consolidating member bank are transferred to a merged or consolidated member bank by operation of law, no bank being placed in liquidation, the merged or consolidated bank becomes the owner of the Federal Reserve Bank stock of the merging or consolidating bank as soon as the merger or consolidation takes effect, and a new certificate representing Federal Reserve Bank stock will be issued as provided in § 209.13(b). Mergers or consolidations under the acts of Congress providing for the merger or consolidation of national banking associations (12 U.S.C. 215, 215a) meet all of these conditions.

[8] The term "receiver" includes any person, commission, or other agency charged by law with the duty of winding up the affairs of the bank.

§ 209.8 Voluntary liquidation.

Whenever a member bank goes into voluntary liquidation, as, for example, upon sale of assets to another bank, the liquidating agent or some other person or persons duly authorized by the stockholders or board of directors to act on behalf of the bank shall, within three months from the date of the vote to place the bank in voluntary liquidation, file with the Federal Reserve Bank of the district an application on Form FR 86 for cancellation of Federal Reserve Bank stock held by the liquidating member bank. If such application is not filed within the time specified, the board of directors of the Federal Reserve Bank will either issue an order to cancel such stock, or, if the circumstances warrant it, grant additional time in which to file an application. Upon approval of such application, or upon issuance of such order, the Federal Reserve Bank will cancel such stock as of the date of such approval or order and will adjust accounts between the liquidating member bank and the Federal Reserve Bank in the manner described in § 209.5(b).

§ 209.9 Other closed national banks.

(a) Whenever a national bank which has not gone into liquidation as provided in section 5220 of the Revised Statutes of the United States (12 U.S.C. 181), and for which a receiver has not been appointed, discontinues its banking operations for a period of sixty days, the Federal Reserve Bank will report the facts to the Comptroller of the Currency with a statement of reasons why a receiver should be appointed for the national bank. If such receiver is appointed, the procedure prescribed in § 209.7 for cancellation of Federal Reserve Bank stock held by the national bank shall be followed.

(b) Whenever a national bank has been placed in the hands of a conservator, the procedure prescribed in § 209.7 for cancellation of Federal Reserve Bank stock held by such bank shall be followed; provided a certificate is furnished by the Comptroller of the Currency to the effect that the conservator has been authorized to apply for cancellation of Federal Reserve Bank stock, and that the bank is to be liquidated and is not to be permitted to resume business or to reorganize.

§ 209.10 Other closed State member banks.

Whenever a State member bank ceases to exercise banking functions without being placed in liquidation in accordance with the laws of the State in which it is located and without a receiver[9] appointed for it, and such bank has not within sixty days of the cessation of banking functions applied for withdrawal from membership in the Federal Reserve System as provided in Part 208 of this chapter (Regulation H), the Federal Reserve Bank of the district in which such State member bank is located will furnish the Board of Governors of the Federal Reserve System with full information with reference to the facts involved in the case and with a definite recommendation as to whether the Board should require the State member bank to surrender its Federal Reserve Bank stock and terminate all rights and privileges of membership in the Federal Reserve System. Upon receipt of this advice, if termination of membership of the State member bank appears desirable, the Board will give the member bank notice of the date upon which a hearing will be held to determine whether its membership should be terminated. If, after such hearing, the membership of a State bank is terminated, the Board will direct the Federal Reserve Bank of the Federal Reserve district in which the member bank is located to cancel the Federal Reserve Bank stock as of the date of termination of membership and adjust accounts in the manner described in § 209.5(b).

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[9] The term "receiver" includes any person, commission, or other agency charged by law with the duty of winding up the affairs of the bank.

§ 209.11 Voluntary withdrawal from membership.

Any State member bank desiring to withdraw from membership in the Federal Reserve System shall follow the procedure set forth in Part 208 of this chapter (Regulation H), and when all applicable requirements of § 208.10 of this chapter have been complied with the Federal Reserve Bank will cancel the Federal Reserve Bank stock held by the member bank as of the date of withdrawal from membership and will adjust accounts in the manner described in § 209.5(b).

§ 209.12 Involuntary termination of membership.

Any State member bank whose membership has been terminated for failure to comply with the provisions of the Federal Reserve Act or regulations of the Board of Governors of the Federal Reserve System shall surrender its Federal Reserve Bank stock as of the date membership is terminated and accounts will be adjusted in the manner described in § 209.5(b).

§ 209.13 Cancellation of old and issue of new stock certificate.

(a) Whenever a member bank changes its name it shall surrender to the Federal Reserve Bank the certificate of Federal Reserve Bank stock which was issued to it under its old name. If the Federal Reserve Bank has or is furnished with proof of the change of name, it will cancel the certificate so surrendered and will issue in lieu thereof to and in the name of the member bank surrendering it a new certificate for the number of shares represented by the certificate so surrendered.

(b) If a member bank has filed application for an increase or decrease in its holdings of Federal Reserve Bank stock pursuant to the provisions of § 209.3, or has acquired the Federal Reserve Bank stock from another Bank by virtue of a merger or consolidation of the kind described in § 209.5(a), it shall surrender the stock certificate previously issued to it and the certificate representing any stock so acquired, and the Federal Reserve Bank will issue a new certificate for the number of shares represented by the surrendered certificate or certificates decreased by the number of shares canceled or increased by the number of additional shares to be issued.

(c) In order to provide a convenient means for identifying shares of Federal Reserve Bank stock purchased and paid for prior to March 28, 1942, as to which dividends are not subject to Federal taxation, the Federal Reserve Bank will endorse on the back of the stock certificate an appropriate notation setting forth the number of shares represented which were purchased and paid for prior to March 28, 1942, and the number of shares purchased and paid for on or after that date. In lieu of issuing a single certificate, the Federal Reserve Bank may issue two certificates to each member bank holding both classes of stock, one representing stock purchased and paid for prior to March 28, 1942, and the other representing stock purchased and paid for on or after that date, in which case the former will be endorsed to read: "This certificate represents shares of Federal Reserve Bank stock which were purchased and paid for prior to March 28, 1942." No endorsement will be necessary on the latter certificate.

§ 209.14 Forms.

All forms referred to in this part and all such forms as they may be amended from time to time shall be a part of the regulation contained in this part.

PART 210—COLLECTION OF CHECKS AND OTHER ITEMS AND TRANSFERS OF FUNDS

Subpart A—Collection of Checks and Other Items

Sec.

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Subpart B—Wire Transfers of Funds

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210.37 Timeliness of action.
210.38 Reserve Bank liability.

AUTHORITY: Federal Reserve Act, sec. 13, (12 U.S.C. 342); sec. 11(i), 12 U.S.C. 248(i); sec. 16, (12 U.S.C. 248(o) and 360); and sec. 19, (12 U.S.C. 464), et seq.

SOURCE: 45 FR 68634, Oct. 16, 1980, unless otherwise noted.

Subpart A—Collection of Checks and Other Items

§ 210.1 Authority, purpose, and scope.

The Board of Governors of the Federal Reserve System ("Board") has issued this subpart pursuant to the Federal Reserve Act, section 13 (12 U.S.C. 342), section 16 (12 U.S.C. 248(o), 360), section 11(i) (12 U.S.C. 248(i)), and other laws. This subpart governs the collection of checks and other cash and noncash items by Federal Reserve Banks ("Reserve Banks"). Its purpose is to provide rules for collecting items and settling balances.

§ 210.2 Definitions.

As used in this subpart, unless the context otherwise requires:

(a) "Actually and finally collected funds" means cash or any other form of payment that is, or has become, final and irrevocable.

(b) "Bank" includes a depository institution as defined in section 19 of the Federal Reserve Act (12 U.S.C. 461(b)).

(c) "Bank draft" means a check drawn by one bank on another bank.

(d) "Banking day" means a day during which a bank is open to the public for carrying on substantially all its banking functions.

(e) "Cash item" means:

(1) A check other than one classified as a noncash item under this section; or

(2) Any other item payable on demand and collectible at par that the Reserve Bank of the District in which the item is payable is willing to accept as a cash item.

(f) "Check" means a draft, as defined in the Uniform Commercial Code, that is drawn on a bank and payable on demand.

(g) "Item" means an instrument for the payment of money, whether negotiable or not, that is:

(1) Payable in a Federal Reserve District[1] ("District");

(2) Sent by a sender to a Reserve Bank for handling under this subpart; and

(3) Collectible in funds acceptable to the Reserve Bank of the District in which the instrument is payable.

Unless otherwise indicated, "item" includes both cash and noncash items.

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[1] For purposes of this subpart, the Virgin Islands and Puerto Rico are deemed to be in the Second District, and Guam and American Samoa in the Twelfth District.

"Item" does not include a check that cannot be collected at par,[2] or an "item" as defined in § 210.26 that is handled under Subpart B.

(h) "Nonbank payor" means a payor of an item, other than a bank.

(i) "Noncash item" means an item that a receiving Reserve Bank classifies in its operating circulars as requiring special handling. The term also means an item normally received as a cash item if a Reserve Bank decides that special conditions require that it handle the item as a noncash item.

(j) "Paying bank" means:

(1) The bank by which an item is payable, unless the item is payable or collectible through another bank and is sent to the other bank for payment or collection; or

(2) The bank through which an item is payable or collectible and to which it is sent for payment or collection.

(k) "Sender" means any of the following that sends an item to a Reserve Bank: a depository institution, a clearing institution, another Reserve Bank, an international organization, a foreign correspondent, or a branch or agency of a foreign bank maintaining reserves under section 7 of the International Banking Act of 1978 (12 U.S.C. 347d, 3105).

(1) "Depository institution" means a depository institution as defined in section 19(b) of the Federal Reserve Act. (12 U.S.C. 461(b))

(2) "Clearing institution" means:

(i) An institution that is not a depository institution, but maintains with a Reserve Bank the balance referred to in the first paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 342); or

(ii) A corporation that maintains an account with a Reserve Bank in conformity with § 211.4 of this chapter (Regulation K).

(3) "International Organization" means an international organization for which a Reserve Bank is empowered to act as depository or fiscal agent and maintains an account.

(4) "Foreign correspondent" means any of the following for which a Reserve Bank maintains an account: a foreign bank or banker, a foreign state as defined in section 25(b) of the Federal Reserve Act (12 U.S.C. 632), or a foreign correspondent or agency referred to in section 14(e) of that Act (12 U.S.C. 358).

(l) "State" means a State of the United States, the District of Columbia, Puerto Rico, or a territory, possession, or dependency of the United States.

[45 FR 68634, Oct. 16, 1980, as amended at 46 FR 42059, Aug. 19, 1981]

§ 210.3 General provisions.

(a) *General.* Each Reserve Bank shall receive and handle items in accordance with this subpart, and shall issue operating circulars governing the details of its handling of items and other matters deemed appropriate by the Reserve Bank. The circulars may, among other things, classify cash items and noncash items, require separate sorts and letters, and provide different closing times for the receipt of different classes or types of items.

(b) *Binding effect.* This subpart and the operating circulars of the Reserve Banks are binding on the sender of an item, on each collecting bank, paying bank, and nonbank payor, to which a Reserve Bank (or a subsequent collecting bank) presents or sends an item, and on other parties interested in the item, including the owner.

(c) *Government items.* As depositaries and fiscal agents of the United States, Reserve Banks handle certain items payable by the United States or certain Federal agencies as cash or noncash items. To the extent provided by regulations issued by, and arrangements made with, the United States Treasury Department and other Government departments and agencies, the handling of such items is governed by this subpart. The Reserve Banks shall include in their operating circulars such information regarding these regulations and arrangements as the Reserve Banks deem appropriate.

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[2] The Board publishes a "Memorandum on Exchange Charges," listing the banks that would impose exchange charges on cash items and other checks forwarded by Reserve Banks and therefore would not pay at par.

(d) *Government senders.* Except as otherwise provided by statutes of the United States, or regulations issued or arrangements made thereunder, this subpart and the operating circulars of the Reserve Banks apply to the following when acting as a sender: a department, agency, instrumentality, independent establishment, or office of the United States, or a wholly owned or controlled Government corporation, that maintains or uses an account with a Reserve Bank.

§ 210.4 Sending items to Reserve Banks.

(a) A sender may send any item to the Reserve Bank with which it maintains or uses an account, but that Reserve Bank may permit or require the sender to send direct to another Reserve Bank an item payable within the other Reserve Bank's District.

(b) With respect to an item sent direct, the relationships and the rights and liabilities between the sender, the Reserve Bank of its District, and the Reserve Bank to which the item is sent are the same as if the sender had sent the item to the Reserve Bank of its District and that Reserve Bank had sent the item to the other Reserve Bank.

(c) The Reserve Banks shall receive cash items and other checks at par.

§ 210.5 Sender's agreement; recovery by Reserve Bank.

(a) *Sender's agreement.* By sending an item to a Reserve Bank, the sender:

(1) Authorizes the receiving Reserve Bank (and any other Reserve Bank or collecting bank to which the item is sent) to handle the item subject to this subpart and to the Reserve Banks' operating circulars, and warrants its authority to give this authorization;

(2) Warrants to each Reserve Bank handling the item that: (i) The sender has good title to the item or is authorized to obtain payment on behalf of one who has good title (whether or not this warranty is evidenced by the sender's express guaranty of prior indorsements on the item); and (ii) to the extent prescribed by State law applicable to a Reserve Bank or subsequent collecting bank handling the item, the item has not been materially altered; but paragraph (a)(2) of this section does not limit any warranty by a sender arising under State law; and

(3) Agrees to indemnify each Reserve Bank for any loss of expense sustained (including attorneys' fees and expenses of litigation) resulting from (i) the sender's lack of authority to make the warranty in paragraph (a)(1) of this section; (ii) any action taken by the Reserve Bank within the scope of its authority in handling the item; or (iii) any warranty made by the Reserve Bank under § 210.6(b) of this subpart.

(b) *Recovery by Reserve Bank.* If an action or proceeding is brought against a Reserve Bank that has handled an item, based on:

(1) The alleged failure of the sender to have the authority to make the warranty and agreement in paragraph (a)(1) of this section;

(2) Any action by the Reserve Bank within the scope of its authority in handling the item; or

(3) Any warranty made by the Reserve Bank under § 210.6(b) of this subpart,

the Reserve Bank may, upon the entry of a final judgment or decree, recover from the sender the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay under the judgment or decree, together with interest thereon.

(c) *Methods of recovery.* The Reserve Bank may recover the amount stated in paragraph (b) of this section by charging any account on its books that is maintained or used by the sender (or if the sender is another Reserve Bank, by entering a charge against the other Reserve Bank through the Interdistrict Settlement Fund), if:

(1) The Reserve Bank made seasonable written demand on the sender to assume defense of the action or proceeding; and

(2) The sender has not made any other arrangement for payment that is acceptable to the Reserve Bank.

A Reserve Bank that has been charged through the Interdistrict Settlement Fund may recover from its sender in the manner and under the circumstances set forth in this paragraph. A Reserve Bank's failure to avail itself of the remedy provided in this paragraph does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (a)(3) of this section.

§ 210.6 Status, warranties, and liability of Reserve Bank.

(a) (1) *Status and liability.* A Reserve Bank shall act only as the sender's agent in respect of an item. This agency terminates not later than the time the Reserve Bank receives payment for the item in actually and finally collected funds and makes the proceeds available for use by the sender. A Reserve Bank shall not act as agent or subagent of an owner or holder of an item other than the sender. A Reserve Bank shall not have or assume any liability to the sender in respect of an item or its proceeds except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care.

(2) *Reliance on routing designation appearing on item.* A Reserve Bank may present or send an item based on the routing number or other designation of a paying bank or nonbank payor appearing in any form on the item when the Reserve Bank receives it. A Reserve Bank shall not be responsible for any delay resulting from its acting on any designation, whether inscribed by magnetic ink or by other means, and whether or not the designation acted on is consistent with any other designation appearing on the item.

(b) *Warranties and liability.* By presenting or sending an item, a Reserve Bank warrants to a subsequent collecting bank and to the paying bank and any other payor:

(1) That the Reserve Bank has good title to the item (or is authorized to obtain payment on behalf of one who either (i) has good title or (ii) is authorized to obtain payment on behalf of one who has good title), whether or not this warranty is evidenced by the Reserve Bank's express guaranty of prior indorsements on the item; and

(2) That the item has not been materially altered to the extent prescribed by State law applicable to a Reserve Bank or subsequent collecting bank holding the item.

The Reserve Bank shall not have or assume any other liability to the paying bank or other payor, except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care.

§ 210.7 Presenting items for payment.

(a) *Presenting or sending.* As provided under State law or as otherwise permitted by this section: (1) a Reserve Bank or a subsequent collecting bank may present an item for payment or send the item for presentment and payment; and

(2) A Reserve Bank may send an item to a subsequent collecting bank with authority to present it for payment or to send it for presentment and payment.

(b) *Place of presentment.* A Reserve Bank or subsequent collecting bank may present an item:

(1) At a place requested by the paying bank;

(2) At a place requested by the nonbank payor, if the item is payable by a nonbank payor other than through a paying bank;

(3) Under a special collection agreement consistent with this subpart; or

(4) Through a clearing house and subject to its rules and practices.

(c) *Presenting or sending direct.* A Reserve Bank or subsequent collecting bank may, with respect to an item payable in the Reserve Bank's District:

(1) Present or send the item direct to the paying bank, or to a place requested by the paying bank; or

(2) If the item is payable by a nonbank payor other than through a paying bank, present it direct to the nonbank payor. Documents, securities, or other papers accompanying a noncash item shall not be delivered to the nonbank payor before the item is paid unless the sender specifically authorizes delivery.

(d) *Item payable in another district.* A Reserve Bank receiving an item payable in another District ordinarily sends the item to the Reserve Bank of the other District, but with the agreement of the other Reserve Bank, may present or send the item as if it were payable in its own District.

§ 210.8 Presenting noncash items for acceptance.

A Reserve Bank or a subsequent collecting bank may, if instructed by the sender, present a noncash item for acceptance in any manner authorized by law if: (a) The item provides that it must be presented for acceptance; (b) the item is payable elsewhere than at the residence or place of business of the payor; or (c) the date of payment of the item depends on presentment for acceptance. Documents accompanying a noncash item shall not be delivered to the payor upon acceptance of the item unless the sender specifically authorizes delivery. A Reserve Bank shall not have or assume any other obligation to present or to send for presentment for acceptance any noncash item.

§ 210.9 Payment.

(a) *Cash items.* (1) A paying bank becomes accountable for the amount of a cash item received directly or indirectly from a Reserve Bank, at the close of the paying bank's banking day on which it receives[3] the item if it retains the item after the close of that banking day, unless, prior to that time, it pays for the item by:

(i) Debit to an account on the Reserve Bank's books;

(ii) Cash; or

(iii) In the discretion of the Reserve Bank, any other form of payment.

(2) The proceeds of any payment shall be available to the Reserve Bank by the close of the Reserve Bank's banking day on the banking day of receipt of the item by the paying bank. If the banking day of receipt is not a banking day for the Reserve Bank, payment shall be made on the next day that is a banking day for the Reserve Bank by the close of the Reserve Bank's banking day. A paying bank that closes regularly on a weekday which is a banking day for the Reserve Bank shall either pay on that day by the close of the Reserve Bank's banking day for cash items that the Reserve Bank makes available to the paying bank on that day, or compensate the Reserve Bank for the value of the float associated with the items in accordance with procedures provided in its Reserve Bank's operating circular; in such circumstances, the paying bank is not considered to receive the item until its next banking day.

(b) *Noncash items.* A Reserve Bank may require the paying or collecting bank to which it has presented or sent a noncash item to pay for the item in cash, but the Reserve Bank may permit payment by a debit to an account on the Reserve Bank's books or by any of the following that is in a form acceptable to the Reserve Bank: bank draft, transfer of funds or bank credit, or any other form of payment authorized by State law.

(c) *Nonbank payor.* A Reserve Bank may require a nonbank payor to which it has presented an item to pay for it in cash, but the Reserve Bank may permit payment in any of the following that is in a form acceptable to the Reserve Bank: cashier's check, certified check, or other bank draft or obligation.

(d) *Handling of payment.* A Reserve Bank may handle a bank draft or other form of payment it receives in payment of a cash item as a cash item. A Reserve Bank may handle a bank draft or other form of payment it receives in payment of a noncash item as either a cash item or a noncash item.

(e) *Liability of Reserve Bank.* A Reserve Bank shall not be liable for the failure of a collecting bank, paying bank, or nonbank payor to pay for an item, or for any loss resulting from the Reserve Bank's acceptance of any form of payment other than cash authorized in paragraphs (a), (b), and (c) of this section. A Reserve Bank that acts in good faith and exercises ordinary care shall not be liable for the nonpayment of, or failure to realize upon, a bank draft or other form of payment that it accepts under paragraphs (a), (b), and (c).

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[3] A paying bank is deemed to receive a cash item on its next banking day if it receives the item:

(1) On a day other than a banking day for it; or

(2) On a banking day for it, but

(i) After its regular banking hours;

(ii) After a "cut-off hour" established by it in accordance with State law; or

(iii) During afternoon or evening periods when it is open for limited functions only.

[45 FR 68634, Oct. 16, 1980, as amended at 49 FR 4200, Feb. 3, 1984]

§ 210.10 Time schedule and availability of credits for cash items.

(a) Each Reserve Bank shall include in its operating circulars a time schedule for each of its offices indicating when the amount of any cash item received by it (or sent direct to another Reserve office for the account of that Reserve Bank) is counted as reserve for purposes of Part 204 of this chapter (Regulation D) and becomes available for use by the sender. The Reserve Bank shall give either immediate or deferred credit in accordance with its time schedule to a sender other than a foreign correspondent. A Reserve Bank ordinarily gives credit to a foreign correspondent only when the Reserve Bank receives payment for the item in actually and finally collected funds, but, in its discretion, a Reserve Bank may give immediate or deferred credit in accordance with its time schedule.

(b) Notwithstanding its time schedule, a Reserve Bank may refuse at any time to permit the use of credit given for any cash item for which the Reserve Bank has not yet received payment in actually and finally collected funds.

§ 210.11 Availability of proceeds of noncash items; time schedule.

(a) *Availability of credit.* A Reserve Bank shall give credit to the sender for the proceeds of a noncash item when it receives payment in actually and finally collected funds (or advice from another Reserve Bank of such payment to it). The amount of the item is counted as reserve for purposes of Part 204 of this chapter (Regulation D) and becomes available for use by the sender when the Reserve Bank receives the payment or advice, except as provided in paragraph (b) of this section.

(b) *Time schedule.* A Reserve Bank may give credit for the proceeds of a noncash item subject to payment in actually and finally collected funds in accordance with a time schedule included in its operating circulars. The time schedule shall indicate when the proceeds of the noncash item will be counted as reserve for purposes of Part 204 of this chapter (Regulation D) and become available for use by the sender. A Reserve Bank may, however, refuse at any time to permit the use of credit given for a noncash item for which the Reserve Bank has not yet received payment in actually and finally collected funds.

(c) *Handling of payment.* If a Reserve Bank receives, in payment for a noncash item, a bank draft or other form of payment that it elects to handle as a noncash item, the Reserve Bank shall neither count the proceeds as reserve for purposes of Part 204 of this chapter (Regulation D) nor make the proceeds available for use until it receives payment in actually and finally collected funds.

§ 210.12 Return of cash items.

(a) *Recovery of payment.* A paying bank that receives a cash item directly or indirectly from a Reserve Bank, other than for immediate payment over the counter, and that pays for the item as provided in § 210.9(a) of this subpart, may recover the payment if, before it has finally paid the item, it:

(1) Returns the item before midnight of its next banking day following the banking day of receipt; or

(2) Takes any other action to recover the payment within the times and by the means provided by State law.

The rules or practices of a clearinghouse through which the item was presented, or a special collection agreement under which the item was presented, may not extend these return times, but may provide for a shorter return time.

(b) *Paying bank's warranties and agreement.* A paying bank that obtains a credit or refund for the amount of a payment it has made for a cash item:

(1) Warrants to the Reserve Bank (and to a subsequent collecting bank, and to the sender and all prior parties) that it took all action necessary to entitle it to recover its payment within the time limits of: (i) This subpart; (ii) State law, unless a longer time is afforded by this subpart; (iii) the rules or practices of any clearing house through which the item was present-

l; and (iv) any special collection greement under which the item was resented; and

(2) Agrees to indemnify the Reserve ank for any loss or expense sustained ncluding attorneys' fees and ex- enses of litigation) resulting from the eserve Bank's giving the credit or efund to the paying bank, or charg- g, or obtaining a refund from, the ender.

(c) *Notification of Nonpayment.* (1) paying bank that receives a cash em in the amount of $2500 or more rectly or indirectly from a Reserve ank and determines not to pay it all provide notice to the first bank which the item was transferred for ollection ("depositary bank") that e paying bank is returning the item npaid. If the depositary bank is not cated in a state, the paying bank all provide the notice to the bank lo- ted in a state that first handled the em for collection.

(2) The paying bank shall provide e notice such that it is received as ecified by the operating circular of e paying bank's Reserve Bank by e depositary bank by midnight of e second banking day of the paying ank following the deadline for return the item as specified in paragraph) of this section. If the day the ying bank is required to provide otice to the depositary bank is not a anking day for the depositary bank, ceipt of notice on the depositary ank's next banking day shall consti- te timely notice under this para- aph. Notice may be provided rough any means, including return the cash item so long as the cash em is received by the depositary ank within the time limits specified this subparagraph.

(3) The information contained in the otice shall include the name of the aying bank, the name of the payee, e amount of the item, the reason for turn, the date of the indorsement of e depositary bank, the account umber of the depositor, the branch which the item was first deposited, d the trace number on the item of e depositary bank, and should other- ise be in accordance with uniform andards and procedures specified by e operating circular of the paying bank's Reserve Bank. A paying bank is not required to provide any information in the notice that it, after exercising ordinary care and acting in good faith, is not able to determine with reasonable certainty from the item itself.

(4) A paying bank is not required to, but may voluntarily, provide notice to the department of the depositary bank or other entity specified by the depositary bank to receive the notice.

(5) If a paying bank provides a notice pursuant to subparagraph (1) of this paragraph and subsequently determines to pay the item, the paying bank shall provide to the depositary bank a second notice as soon as reasonably possible. This second notice should indicate that it is a second notice that is cancelling a previous notice and should contain sufficient information to enable the depositary bank to match the second notice with the previous notice.

(6) A paying bank that fails to exercise ordinary care in meeting the requirements of this paragraph shall be liable to the depositary bank for losses incurred by the depositary bank, up to the amount of the item, reduced by the amount of the loss that the depositary bank would have incurred even if the paying bank had used ordinary care. A paying bank that fails to act in good faith in meeting the requirements of this paragraph may be liable for other damages, if any, suffered by the depositary bank as a proximate consequence. If the paying bank or the depositary bank prevails in litigation involving the requirements of this paragraph, it may recover its court costs and reasonable attorneys' fees. A paying bank shall not be liable for mistake, neglect, negligence, misconduct, insolvency or default of any other bank or other person in connection with providing notice under this paragraph.

(7) Notwithstanding the provisions of section 210.6 of this subpart, a Reserve Bank that fails to exercise ordinary care in undertaking to provide the notice required in this paragraph on a paying bank's behalf shall be liable to the depositary bank for losses incurred by the depositary bank, up to the amount of the item, reduced by

the amount of the loss that the depositary bank would have incurred even if the Reserve Bank had used ordinary care. A Reserve Bank that fails to act in good faith in undertaking to provide the notice required in this paragraph on a paying bank's behalf may be liable for other damages, if any, suffered by the depositary bank as a proximate consequence. If the Reserve Bank or the depositary bank prevails in litigation involving the requirements of this paragraph, it may recover its court costs and reasonable attorneys' fees. A Reserve Bank shall not be liable for mistake, neglect, negligence, misconduct, insolvency or default of any other bank or other person, including the paying bank in connection with providing notice under this paragraph.

(8) Notwithstanding the provisions of § 210.6 of this subpart, a Reserve Bank that undertakes to provide the notice required in this paragraph on a paying bank's behalf shall indemnify the paying bank for any claim brought against it by the depositary bank that results from the Reserve Bank's failure to exercise ordinary care or failure to act in good faith in providing the notice. The paying bank shall indemnify a Reserve Bank that undertakes to provide the notice required in this paragraph on the paying bank's behalf for any claim brought against the Reserve Bank by the depositary bank that results from the paying bank's failure to exercise ordinary care or failure to act in good faith in connection with the provision of the notice.

(9) This paragraph does not apply to an item drawn on the account of the U.S. Treasury or to an item indorsed by, or for credit to, the U.S. Treasury.

(10) The following days shall not be considered banking days for purposes of the deadline for notice of nonpayment: Saturdays and Sundays, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, and December 25. If January 1, July 4, November 11, or December 25 fall on a Saturday, the previous Friday shall not be considered a banking day for purposes of this subsection. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next following Monday shall not be considered a banking day for purposes of this subsection.

(d) A Reserve Bank shall not have or assume any responsibility for determining whether the action taken by a paying bank was timely.

[45 FR 68634, Oct. 16, 1980, as amended at 50 FR 5740, Feb. 12, 1985; 50 FR 41336, Oct. 10, 1985]

§ 210.13 Chargeback of unpaid items.

(a) *Right of chargeback.* If a Reserve Bank does not receive payment in actually and finally collected funds for an item for which the Reserve Bank gave credit subject to payment in actually and finally collected funds, the Reserve Bank shall charge back the amount of the item to the sender, whether or not the item itself can be returned. In the event of chargeback, neither the owner or holder of the item nor the sender shall have any interest in any reserve balance or other funds of the paying bank or a collecting bank in the Reserve Bank's possession.

(b) *Suspension or closing of bank.* A Reserve Bank shall not pay or act on a draft, authorization to charge, or other order on a reserve balance or other funds in its possession after it receives notice of suspension or closing of the bank making the payment for that bank's own or another's account.

§ 210.14 Extension of time limits.

If, because of interruption of communication facilities, suspension of payments by a bank or nonbank payor, war, emergency conditions or other circumstances beyond its control, a bank (including a Reserve Bank) or nonbank payor is delayed in acting on an item beyond applicable time limits, its time for acting is extended for the time necessary to complete the action, if it exercises such diligence as the circumstances require.

§ 210.15 Direct presentment of certain warrants.

If a Reserve Bank elects to present direct to the payor a bill, note, or warrant that is issued and payable by a State or a political subdivision and that is a cash item not payable or collectible through a bank: (a) Sections 210.9, 210.12, and 210.13 and the operating circulars of the Reserve Banks apply to the payor as if it were a paying bank; (b) § 210.14 applies to the payor as if it were a bank; and (c) under § 210.9 each day on which the payor is open for the regular conduct of its affairs or the accommodation of the public is considered a banking day.

Subpart B—Wire Transfers of Funds

§ 210.25 Authority, purpose, and scope.

The Board of Governors of the Federal Reserve System ("Board") has issued this subpart pursuant to the Federal Reserve Act, section 13 (12 U.S.C. 342), paragraph (f) of section 19 (12 U.S.C. 464), paragraph 14 of section 16 (12 U.S.C. 248(o)), paragraphs (i) and (j) of section 11 (12 U.S.C. 248(i) and (j)), and other laws. This subpart governs the handling by Federal Reserve Banks ("Reserve Banks") of transfer items and transfer requests. Its purpose is to provide rules for the wire transfer of funds.

§ 210.26 Definitions.

As used in this subpart, unless the context otherwise requires:

(a) "Beneficiary" means a person or organization, other than the transferee, designated in a transfer item or request to receive the amount of the item or request from the transferee.

(b) "Interoffice transaction" means a transfer between a transferor and transferee that do not maintain or use accounts at the same office of a Reserve Bank.

(c) "Item" means a writing evidencing a request for the payment of money, that is handled under this subpart. "Item" does not include an "item" as defined in § 210.2 that is handled under Subpart A.

(d) "Transfer item" means an item: (1) Sent by a transferor (other than a Reserve Bank) to a Reserve Bank for debit to the transferor's account at the Reserve Bank and for credit to a transferee; (2) sent by a Reserve Bank to another Reserve Bank for credit to the latter or to any other transferee; or (3) issued by a Reserve Bank at the request of a transferor for credit to a transferee.

(e) "Transfer request" or "request" means a request by telephone that a Reserve Bank issue a transfer item.

(f) "Transferee" means a member bank, a Reserve Bank, or other institution that (1) maintains or, if authorized by the Reserve Bank, uses an account at a Reserve Bank and (2) is designated in a transfer item or request to receive the amount of the item or request.

(g) "Transferor" means a member bank, a Reserve Bank, or other institution that maintains or uses an account at a Reserve Bank and that is authorized by that Reserve Bank to send a transfer item or request to it.

(h) "Transferor's account" or "transferee's account" means the account at its Reserve Bank maintained or used by the transferor or transferee, respectively.

(i) "Transferor's Reserve Bank" or "transferee's Reserve Bank" means the Reserve office at which the transferor or transferee, respectively, maintains or uses an account.

§ 210.27 General provisions.

(a) *General.* Each Reserve Bank shall receive and handle transfer items, and shall itself issue transfer items, in accordance with this subpart. Each Reserve Bank shall issue an operating circular governing the details of its funds transfer operations and other matters deemed appropriate by the Reserve Bank. The circulars may, among other things: Set minimum and maximum dollar amounts; specify format and authentication requirements for transfer items and requests; and impose reasonable funds transfer charges.

(b) *Binding effect.* This subpart and the operating circulars of the Reserve Banks are binding on transferors, transferees, beneficiaries, and other parties interested in an item.

(c) *Government transferors and transferees.* Except as otherwise provided by statutes of the United States, or regulations issued or arrangements made thereunder, this subpart and the operating circulars of the Reserve

Banks apply to the following when acting as a transferor or transferee: A department, agency, instrumentality, independent establishment, or office of the United States, or a wholly owned or controlled Government corporation, that maintains or uses an account with a Reserve Bank.

§ 210.28 Media for transfer items and requests.

(a) *Transfer items.* A transferor may issue and send a transfer item in any of the following media, if specified in the operating circular of the transferor's Reserve Bank:

(1) A letter, memorandum, or similar writing;

(2) A telegram (including TWX, TELEX, or similar form of communication); and

(3) Any form of communication, other than voice, registered on (or in form suitable for being registered on) magnetic tape, disc, or other medium designed to contain in durable form conventional signals used for electronic communication of messages.

(b) *Transfer requests.* A transferor may make transfer requests only under special arrangements with its Reserve Bank. The Reserve Bank may record these telephone messages.

§ 210.29 Transferor's agreement.

A transferor, by sending a transfer item or making a transfer request to its Reserve Bank, authorizes:

(a) Its Reserve Bank to debit the amount to the transferor's account, and to handle the transfer item or request in accordance with this subpart and the operating circulars of the Reserve Banks; and

(b) The transferee's Reserve Bank to handle a matching transfer item (matching as to amount, transferee, and beneficiary, if any) in accordance with this subpart and the operating circulars of the transferee's Reserve Bank.

§ 210.30 Transferee's agreement.

(a) A transferee (other than a Reserve Bank), by maintaining or using an account at a Reserve Bank, authorizes its Reserve Bank to credit the amount of the transfer item to its account.

(b) A transferee (other than a Reserve Bank) that receives a transfer item, or advice of credit of a transfer item, designating a beneficiary, agrees:

(1) To credit promptly the beneficiary's account or otherwise make the amount available to the beneficiary; or

(2) To notify promptly its Reserve Bank if it is unable to do so because of circumstances beyond its control.

§ 210.31 Sending transfer items and requests.

(a) A transferor (other than a Reserve Bank) may send a transfer item to, or make a transfer request of, its Reserve Bank. A Reserve Bank may refuse to act on, or may impose conditions to its acting on, a transfer item or request if it has reason to believe that the balance in the transferor's account is not sufficient to cover the item or request. The transferor shall arrange to have in its account, at the end of its Reserve Bank's banking day, a balance of actually and finally collected funds sufficient to cover the amounts of transfer items debited to the account during that day. In addition to other remedies, the Reserve Bank has a security interest in the transferor's assets in the possession of, or held for the account of, the Reserve Bank if:

(1) The balance in the transferor's account at the end of the Reserve Bank's banking day is not sufficient to cover the amounts debited to the account during that day; or

(2) The transferor suspends payment or is closed at any time during the Reserve Bank's banking day, and does not have a balance sufficient to cover the amounts debited to its account.

(b) A Reserve Bank may send a transfer item to, or make a transfer request of, another Reserve Bank.

§ 210.32 Handling transfer items and requests.

(a) *Intraoffice transactions.* If the transferor and transferee maintain or use accounts at the same Reserve office, that office shall act on a transfer item by debiting and crediting their accounts. The Reserve office shall act on a transfer request by issuing a transfer item, and debiting and crediting the accounts.

(b) *Interoffice transactions.* The transferor's Reserve Bank shall handle an interoffice transaction by debiting the transferor's account and, acting as a transferor, issuing and sending to the transferee's Reserve Bank a matching transfer item (matching as to amount, transferee, and beneficiary, if any). The transferee's Reserve Bank shall transfer funds to the transferee by debiting the account of the transferor's Reserve Bank, and crediting the transferee's account.

(c) *Notice of delay.* If a Reserve Bank learns that it is unable to effectuate a transfer of funds on a timely basis for any reason, it shall notify the transferor of the delay within a reasonable time.

§ 210.33 Time limits.

(a) *Time schedule.* Each Reserve Bank shall include in its operating circular a schedule showing the hours during which it handles transfer items and requests.

(b) *Acting seasonably.* A Reserve Bank acts seasonably if it takes proper action on the day it receives a transfer item or request. Taking proper action within a reasonably longer time may be seasonable but the Reserve Bank has the burden of so establishing. No Reserve Bank shall represent that it will complete a transfer of funds on the day requested.

(c) *Transfers after closing hour.* A Reserve Bank is not required to act on the day it receives an item or request if it receives the item or request after the time shown in its schedule. In emergency or other unusual circumstances, a Reserve Bank may handle a transfer item or request after the time shown in its schedule. The completion of an interoffice transaction in these circumstances is also discretionary with the transferee's Reserve Bank.

(d) *As of adjustments.* If a Reserve Bank fails to credit to the transferee's account on the day requested the amount of a transfer item or request received by the Reserve Bank before the time shown in its schedule, the Reserve Bank shall, unless otherwise instructed, complete the transfer on its next banking day and make adjustments for reserve accounting purposes as of the day the transfer was to have been made.

§ 210.34 Advices of credit and debit.

(a) *Advice of credit.* The transferee's Reserve Bank shall give advice of credit to the transferee for an executed transfer of funds.

(b) *Advice of debit.* After receiving a transfer item or request, the transferor's Reserve Bank shall send an advice of debit to the transferor. A transferor is deemed to approve the accuracy of an advice of debit unless it sends to its Reserve Bank written objection within 10 calendar days of receiving the advice of debit.

§ 210.35 Revocation of transfer items and requests.

(a) *Request for revocation.* A Reserve Bank may cease acting on a transfer item or request if it receives from the transferor a request for revocation in time to give the Reserve Bank a reasonable opportunity to comply. If the request is received too late, the Reserve Bank may, on request from the transferor, ask the transferee to return the funds. In an interoffice transaction, the Reserve Bank may ask the transferee's Reserve Bank to ask the transferee to return the funds.

(b) *Erroneous transfer.* In an erroneous or irregular transfer of funds, a Reserve Bank may, on its own initiative or at the request of another Reserve Bank, ask the transferee to return funds previously transferred.

§ 210.36 Final payment; use of funds.

(a) *Final payment.* A transfer item is finally paid when the transferee's Reserve Bank sends the transfer item or sends or telephones the advice of credit for the item to the transferee, whichever occurs first.

(b) *Right to use funds.* Credit given by a Reserve Bank for a transfer of funds becomes available for use when the transfer item is finally paid, subject to the Reserve Bank's right to apply the transferred funds to an obligation owed to it by the transferee.

§ 210.37 Timeliness of action.

If, because of circumstances beyond its control, a Reserve Bank is delayed beyond the time limits provided in this subpart, in its operating circular, or by law in acting on a transfer item or request, the time for acting is extended for the time necessary to complete the action, if the Reserve Bank exercises such diligence as the circumstances require.

§ 210.38 Reserve Bank liability.

(a) *Limitations on liability.* A Reserve Bank shall not have or assume any responsibility to a transferee, beneficiary, or other party, except its immediate transferor. A Reserve Bank shall not be liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person, including a transferor, except as provided in this section. A Reserve Bank shall not have or assume any liability except for its own or another Reserve Bank's lack of good faith or failure to exercise ordinary care.

(b) *Damages.* A Reserve Bank is liable to its immediate transferor for damages proximately caused by a failure to credit the amount of a transfer item or request to the transferee's account caused by a Reserve Bank's failure to exercise ordinary care or to act in good faith. Whether damages are proximately caused by a Reserve Bank's failure to exercise ordinary care or to act in good faith is a question of fact to be determined in each case.

(c) *Right to indemnity.* The transferee's Reserve Bank shall indemnify the transferor's Reserve Bank for any loss or expense sustained (including attorneys' fees and expenses of litigation) as a result of the failure of the transferee's Reserve Bank to exercise ordinary care or to act in good faith in an interoffice transaction.

PART 211—INTERNATIONAL BANKING OPERATIONS

Subpart A—International Operations of United States Banking Organizations

Sec.

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INTERPRETATIONS

211.601 Status of certain offices for purposes of the International Banking Act restrictions on interstate banking operations.
211.602 Investments by United States banking organizations in foreign companies that transact business in the United States.

AUTHORITY: Federal Reserve Act (12 U.S.C. 211 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235); and the International Lending Supervision Act (Title IX, Pub. L. 98-181, 97 Stat. 1153).

Subpart A—International Operations of United States Banking Organizations

SOURCE: 50 FR 39980, Oct. 1, 1985, unless otherwise noted.

§ 211.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Federal Reserve Act ("FRA") (12 U.S.C. 221 et *seq.*); the Bank Holding Company Act of 1956 ("BHC Act") (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978 ("IBA") (92 Stat. 607; 12 U.S.C. 3101 *et seq.*). Requirements for the collection of information contained in this regulation have been approved by the Office of Management and Budget under the provision of 44 U.S.C. 3501, et seq. and have been assigned OMB Nos. 7100-0107; 7100-0109; 7100-0110; 7100-0069; 7100-0086, and 7100-0073.

(b) *Purpose.* This subpart sets out rules governing the international and foreign activities of U.S. banking organizations, including procedures for establishing foreign branches and Edge corporations to engage international banking and for investments in foreign organizations.

(c) *Scope.* This subpart applies to corporations organized under section 25(a) of the FRA (12 U.S.C. 611-631), "Edge corporations"; to corporations having an agreement or undertaking with the Board under section 25 of the FRA (12 U.S.C. 601-604a), "Agreement corporations"; to member banks with respect to their foreign branches and investments in foreign banks under section 25 of the FRA (12 U.S.C. 601-604a);[1] and to bank holding companies with respect to the exemption from the nonbanking prohibitions of the BHC Act afforded by section 4(c)(13) of the BHC Act (12 U.S.C. 1843(c)(13)).

§ 211.2 Definitions.

Unless otherwise specified, for the purposes of this subpart:

(a) An "affiliate" of an organization means (1) any entity of which the organization is a direct or indirect subsidiary; or (2) any direct or indirect subsidiary of the organization or such entity.

(b) "Capital and surplus" means paid-in and unimpaired capital and surplus, and includes undivided profits but does not include the proceeds of capital notes or debentures.

(c) "Directly or indirectly" when used in reference to activities or investments of an organization means activities or investments of the organization or of any subsidiary of the organization.

(d) An Edge corporation is "engaged in banking" if it is ordinarily engaged in the business of accepting deposits in the United States from nonaffiliated persons.

(e) "Engaged in business" or "engaged in activities" in the United States means maintaining and operating an office (other than a representative office) or subsidiary in the United States.

(f) "Foreign" or "foreign country" refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

(g) "Foreign bank" means an organization that: is organized under the laws of a foreign country; engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations; receives deposits to a substantial extent in the regular course of its business; and has the power to accept demand deposits.

(h) "Foreign branch" means an office of an organization (other than a representative office) that is located outside the country under the laws of which the organization is established, at which a banking or financing business is conducted.

(i) "Investment" means the ownership or control of shares (including partnership interests and other interests evidencing ownership), binding commitments to acquire shares, contributions to the capital and surplus of an organization, and the holding of an organization's subordinated debt when shares of the organization are also held by the investor or the investor's affiliate.

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[1] Section 25 of the FRA, which refers to national banking associations, also applies to state member banks of the Federal Reserve System by virtue of section 9 of the FRA (12 U.S.C. 321).

(j) "Investor" means an Edge corporation, Agreement corporation, bank holding company, or member bank.

(k) "Joint venture" means an organization that has 20 percent or more of its voting shares held directly or indirectly by the investor or by an affiliate of the investor, but which is not a subsidiary of the investor.

(l) "Organization" means a corporation, government, partnership, association, or any other entity.

(m) "Person" means an individual or an organization.

(n) "Portfolio investment" means an investment in an organization other than a subsidiary or joint venture.

(o) "Representative office" means an office that engages solely in representational and administrative functions such as solicitation of new business for or liaison between the organization's head office and customers in the United States, and does not have authority to make business decisions for the account of the organization represented.

(p) "Subsidiary" means an organization more than 50 percent of the voting shares of which is held directly or indirectly by the investor, or which is otherwise controlled or capable of being controlled by the investor or an affiliate of the investor.

§ 211.3 Foreign branches of U.S. banking organizations.

(a) *Establishment of foreign branches*—(1) *Right to establish branches.* Foreign branches may be established by any member bank having capital and surplus of $1,000,000 or more, an Edge corporation, an Agreement corporation, or a subsidiary held pursuant to this Subpart. Unless otherwise provided in this section, the establishment of a foreign branch requires the specific prior approval of the Board.

(2) *Branching within a foreign country.* Unless the organization has been notified otherwise, no prior Board approval is required for an organization to establish additional branches in any foreign country where it operates one or more branches.[2]

(3) *Branching into additional foreign countries.* After giving the Board 45 days' prior written notice, an organization that operates branches in two or more foreign counties may establish a branch in an additional foreign country, unless notified otherwise by the Board.[2]

(4) *Expiration of branching authority.* Authority to establish branches through prior approval or prior notice shall expire one year from the earliest date on which the authority could have been exercised, unless the Board extends the period.

(5) *Reporting.* Any organization that opens, closes, or relocates a branch shall report such change in a manner prescribed by the Board.

(b) *Further powers of foreign branches of member banks.* In addition to its general banking powers, and to the extent consistent with its charter, a foreign branch of a member bank may engage in the following activities so far as usual in connection with the business of banking in the country where it transacts business:

(1) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events,[3] if the guarantee or agreement specifies a maximum monetary liability; but except to the extent that the member bank is fully secured, it may not have liabilities outstanding for any person on account of such guarantees or agreements which when aggregated with other unsecured obligations of

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[2] For the purpose of this paragraph, a subsidiary other than a bank or an Edge or Agreement corporation is considered to be operating a branch in a foreign country if it has an affiliate that operates an office (other than a representative office) in that country.

[3] "Readily ascertainable events" include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents.

the same person exceed the limit contained in paragraph (a)(1) of section 5200 of the Revised Statutes (12 U.S.C. 84) for loans and extensions of credit;

(2) *Investments.* Invest in: (i) The securities of the central bank, clearing houses, governmental entities, and government-sponsored development banks of the country in which the foreign branch is located; (ii) other debt securities eligible to meet local reserve or similar requirements; and (iii) shares of professional societies, schools, and the like necessary to the business of the branch; however, the total investments of the bank's branches in that country under this paragraph (exclusive of securities held as required by the law of that country or as authorized under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh)) may not exceed one percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or on the date of acquisition of the branch in the case of a branch that has not so reported);

(3) *Government obligations.* Underwrite, distribute, buy, and sell obligations of: (i) The national government of the country in which the branch is located; (ii) an agency or instrumentality of the national government; and (iii) a municipality or other local or regional governmental entity of the country; however, no member bank may hold, or be under commitment with respect to, such obligations for its own account in an aggregate amount exceeding 10 percent of its capital and surplus;

(4) *Credit extensions to bank's officers.* Extend credit to an officer of the bank residing in the country in which the foreign branch is located to finance the acquisition or construction of living quarters to be used as the officer's residence abroad, provided the credit extension is reported promptly to the branch's home office and any extension of credit exceeding $100,000 (or the equivalent in local currency) is reported also to the bank's board of directors;

(5) *Real estate loans.* Take liens or other encumbrances on foreign real estate in connection with its extensions of credit, whether or not of first priority and whether or not the real estate has been improved.

(6) *Insurance.* Act as insurance agent or broker;

(7) *Employee benefits program.* Pay to an employee of the branch, as part of an employee benefits program, a greater rate of interest than that paid to other depositors of the branch;

(8) *Repurchase agreements.* Engage in repurchase agreements involving securities and commodities that are the functional equivalents of extensions of credit;

(9) *Investment in subsidiaries.* With the Board's prior approval, establish or invest in a wholly-owned subsidiary to engage solely in activities in which the member bank is permitted to engage in or activities that are incidental to the activities of the foreign branch, where required by local law or regulation; and

(10) *Other activities.* With the Board's prior approval, engage in other activities that the Board determines are usual in connection with the transaction of the business of banking in the places where the member bank's branches transact business.

(c) *Reserves of foreign branches of member banks.* Reserves shall be maintained against foreign branch deposits when required by Part 204 of this chapter (Regulation D).

§ 211.4 Edge and Agreement corporations.

(a) *Organization*—(1) *Permit.* A proposed Edge corporation shall become a body corporate when the Board issues a permit approving its proposed name, articles of association, and organization certificate.

(2) *Name.* The name shall include "international," "foreign," "overseas," or some similar word, but may not resemble the name of another organization to an extent that might mislead or deceive the public.

(3) FEDERAL REGISTER *notice.* The Board will publish in the FEDERAL REGISTER notice of any proposal to organize an Edge corporation and will give interested persons an opportunity to express their views on the proposal.

(4) *Factors considered by the Board.* The factors considered by the Board

in acting on a proposal to organize an Edge Corporation include:

(i) The financial condition and history of the applicant:

(ii) The general character of its management;

(iii) The convenience and needs of the community to be served with respect to international banking and financing services; and

(iv) The effects of the proposal on competition.

(5) *Authority to commence business.* After the Board issues a permit, the Edge corporation may elect officers and otherwise complete its organization, invest in obligations of the United States Government, and maintain deposits with depository institutions, but it may not exercise any other powers until at least 25 percent of the authorized capital stock specified in the articles of association has been paid in cash, and each shareholder has paid in cash at least 25 percent of that shareholder's stock subscription. Unexercised authority to commence business as an Edge corporation shall expire one year after issuance of the permit, unless the Board extends the period.

(6) *Amendments to articles of association.* No amendment to the articles of association shall become effective until approved by the Board.

(b) *Nature and ownership of shares.*—(1) *Shares.* Shares of stock in an Edge corporation may not include no-par value shares and shall be issued and transferred only on its books and in compliance with section 25(a) of the FRA and this subpart. The share certificates of an Edge corporation shall:

(i) Name and describe each class of shares indicating its character and any unusual attributes such as preferred status or lack of voting rights; and

(ii) Conspicuously set forth the substance of:

(A) Limitations upon the rights of ownership and transfer of shares imposed by section 25(a) of the FRA; and

(B) Rules that the Edge corporation prescribes in its by-laws to ensure compliance with this paragraph. Any change in status of a shareholder that causes a violation of section 25(a) of the FRA shall be reported to the Board as soon as possible, and the Edge corporation shall take such action as the Board may direct.

(2) *Ownership of Edge corporations by foreign institutions*—(i) *Prior Board approval.* One or more foreign or foreign-controlled domestic institutions referred to in paragraph 13 of section 25(a) of the FRA (12 U.S.C. 619) may apply for the Board's prior approval to acquire directly or indirectly a majority of the shares of the capital stock of an Edge corporation.

(ii) *Conditions and requirements.* Such an institution shall:

(A) Provide the Board information related to its financial condition and activities and such other information as may be required by the Board;

(B) Ensure that any transaction by an Edge corporation with an affiliate[4] is on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions by the Edge corporation with nonaffiliated persons, and does not involve more than the normal risk of repayment or present other unfavorable features;

(C) Ensure that the Edge corporation will not provide funding on a continual or substantial basis to any affiliate or office of the foreign institution through transactions that would be inconsistent with the international and foreign business purposes for which Edge corporations are organized;

(D) In the case of a foreign institution not subject to section 4 of the BHC Act: (i) Comply with any conditions that the Board may impose that are necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States; and (ii) give the Board 45 days' prior written notice, in a form to be prescribed by the Board, before engaging in any nonbanking activity in the United States, or making any initial or additional investments in another organization, that would require prior Board approval or notice by an organization subject to section 4 of the BHC Act; in connection with such notice, the Board may impose conditions necessary to prevent adverse effects that may result from such activity or investment; and

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[4] For purposes of this paragraph, "affiliate" means any organization that would be an "affiliate" under section 23A of the FRA (12 U.S.C. 371c) if the Edge corporation were a member bank.

(E) Invest in Edge corporation no more than 10 percent of the institution's capital and surplus.

(3) *Change in control*—(i) *Prior notice.* Any person shall give the Board 60 days' prior written notice, in a form to be prescribed by the Board, before acquiring, directly or indirectly, 25 percent or more of the voting shares, or otherwise acquiring control, of an Edge corporation; the Board may extend the 60-day period for an additional 30 days by notifying the acquiring party.

(ii) *Board review.* Interviewing a notice filed under this paragraph, the Board shall consider the factors set forth in paragraph (a)(4) of this section and may disapprove a notice or impose any conditions that it finds necessary to assure the safe and sound operation of the Edge corporation, to assure the international character of its operation, and to prevent adverse effects such as decreased or unfair competition, conflicts of interest, or undue concentration of resources.

(c) *Domestic branches.* An Edge corporation may establish branches in the United States 45 days after the Edge corporation has given notice to its Reserve Bank, unless the Edge corporation is notified to the contrary within that time. The notice to the Reserve Bank shall include a copy of the notice of the proposal published in a newspaper of general circulation in the communities to be served by the branch and may appear no earlier than 90 calendar days prior to submission of notice of the proposal to the Reserve Bank. The newspaper notice must provide an opportunity for the public to give written comment on the proposal to the appropriate Federal Reserve Bank for at least 30 days after the date of publication. The factors considered in acting upon a proposal to establish a branch are enumerated in paragraph (a)(4) of this section. Authority to open a branch under prior notice shall expire one year from the earliest date on which that authority could have been exercised, unless the Board extends the period.

(d) *Reserve requirements and interest rate limitations.* The deposits of an Edge or Agreement corporation are subject to Parts 204 and 217 of this chapter (Regulations D and Q) in the same manner and to the same extent as if the Edge or Agreement corporation were a member bank.

(e) *Permissible activities in the United States.* An Edge corporation may engage directly or indirectly in activities in the United States that are permitted by the sixth paragraph of section 25(a) of the FRA and are incidental to international or foreign business, and in such other activities as the Board determines are incidental to international or foreign business. The following activities will ordinarily be considered incidental to an Edge corporation's international or foreign business:

(1) *Deposit activities*—(i) *Deposits from foreign governments and foreign persons.* An Edge corporation may receive in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposits) from foreign governments and their agencies and instrumentalities; offices or establishments located, and individuals residing, outside the United States.

(ii) *Deposits from other persons.* An Edge corporation may receive from any other person in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposit) if such deposits:

(A) Are to be transmitted abroad;

(B) Consist of funds to be used for payment of obligations to the Edge corporation or collateral securing such obligations;

(C) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(D) Consist of the proceeds of extensions of credit by the Edge corporation;

(E) Represent compensation to the Edge corporation for extensions of credit or services to the customer;

(F) Are received from Edge or Agreement corporations, foreign banks and other depository institutions (as described in Part 204 of this chapter (Regulation D));

(G) Are received from an organization that by its charter, license or enabling law is limited to business that is of an international character, including Foreign Sales Corporations (26 U.S.C. 921); transportation organizations engaged exclusively in the international transportation of passengers or in the movement of goods, wares, commodities or merchandise in international or foreign commerce; and export trading companies that are exclusively engaged in activities related to international trade.

(2) *Liquid funds.* Funds of an Edge or Agreement corporation not currently employed in its international or foreign business, if held or invested in the United States, shall be in the form of cash, deposits with depository institutions, as described in Part 204 of this chapter (Regulation D), and other Edge and Agreement corporations, and money market instruments (including repurchase agreements with respect to such instruments) such as bankers' acceptances, obligations of or fully guaranteed by federal, state, and local governments and their instrumentalities, federal funds sold, and commercial paper.

(3) *Borrowings.* An Edge corporation may:

(i) Borrow from offices of other Edge and Agreement corporations, foreign banks, and depository institutions (as described in Part 204 of this chapter, Regulation D) or issue obligations to the United States or any of its agencies or instrumentalities;

(ii) Incur indebtedness from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof that the Edge corporation is obligated to repurchase;

(iii) Issue long-term subordinated debt that does not qualify as a "deposit" under Part 204 of this chapter (Regulation D).

(4) *Credit activities.* An Edge corporation may:

(i) Finance the following: (A) contracts, projects, or activities performed substantially abroad; (B) the importation into or exportation from the United States of goods, whether direct or through brokers or other intermediaries; (C) the domestic shipment or temporary storage of goods being imported or exported (or accumulated for export); and (D) the assembly or repackaging of goods imported or to be exported;

(ii) Finance the costs of production of goods and services for which export orders have been received or which are identifiable as being directly for export;

(iii) Assume or acquire participations in extensions of credit, or acquire obligations arising from transactions the Edge corporation could have financed;

(iv) Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events,[6] if the guarantee or agreement specifies the maximum monetary liability thereunder and is related to a type of transaction described in paragraphs (e)(4)(i) and (ii) of this section; and

(v) Provide credit and other banking services for domestic and foreign purposes to organizations of the type described in § 211.4(e)(1)(ii)(G) of this part.

(5) *Payments and collections.* An Edge corporation may receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other instruments for collection abroad, and collect such instruments in the United States for a customer abroad; and may transmit and receive wire transfers of funds and securities for depositors.

(6) *Foreign exchange.* An Edge corporation may engage in foreign exchange activities.

(7) *Fiduciary and investment advisory activities.* An Edge corporation may:

(i) Hold securities in safekeeping for, or buy and sell securities upon the order and for the account and risk of, a person, provided such services for U.S. persons shall be with respect to foreign securities only;

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[6] "Readily ascertainable events" include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or cost of transport and loss or nonconformance of shipping documents.

(ii) Act as paying agent for securities issued by foreign governments or other entities organized under foreign law;

(iii) Act as trustee, registrar, conversion agent, or paying agent with respect to any class of securities issued to finance foreign activities and distributed solely outside the United States;

(iv) Make private placements of participations in its investments and extensions of credit; however, except to the extent permissible for member banks under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh), no Edge corporation may otherwise engage in the business of underwriting, distributing, or buying or selling securities in the United States;

(v) Act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real property interests and other investment assets,[4] and by providing advice on mergers and acquisitions, provided such services for U.S. persons shall be with respect to foreign assets only; and

(vi) Provide general economic information and advice, general economic statistical forecasting services and industry studies, provided such services for U.S. persons shall be with respect to foreign economies and industries only.

(8) *Banking services for employees.* Provide banking services, including deposit services, to the officers and employees of the Edge corporation and its affiliates; however, extensions of credit to such persons shall be subject to the restrictions of Part 215 of this chapter (Regulation O) as if the Edge corporation were a member bank.

(9) *Other activities.* With the Board's prior approval, engage in other activities in the United States that the Board determines are incidental to the international or foreign business of Edge corporations.

(f) *Agreement corporations.* With the prior approval of the Board, a member bank or bank holding company may invest in a federally- or state-chartered corporation that has entered into an agreement or undertaking with the Board that it will not exercise any power that is impermissible for an Edge corporation under this subpart.

§ 211.5 Investments and activities abroad.

(a) *General policy.* Activities abroad, whether conducted directly or indirectly, shall be confined to those of a banking or financial nature and those that are necessary to carry on such activities. In doing so, investors shall at all times act in accordance with high standards of banking or financial prudence, having due regard for diversification of risks, suitable liquidity, and adequacy of capital. Subject to these considerations and the other provisions of this section, it is the Board's policy to allow activities abroad to be organized and operated as best meets corporate policies.

(b) *Investment requirements*—(1) *Eligible investments.* (i) An investor may directly or indirectly:

(A) Invest in a subsidiary that engages solely in activities listed in paragraph (d) of this section or in such other activities as the Board has determined in the circumstances of a particular case are permissible except that, in the case of an acquisition of a going concern, existing activities that are not otherwise permissible for a subsidiary may account for not more than five percent of either the consolidated assets or revenues of the acquired organization;

(B) Invest in a joint venture provided that, unless otherwise permitted by the Board, not more than 10 percent of the joint venture's consolidated assets or revenues shall be attributable to activities not listed in paragraph (d) of this section; and

(C) Make portfolio investments (including securities held in trading or dealing accounts) in an organization if the total direct and indirect portfolio investments in organizations engaged in activities that are not permissible for joint ventures does not at any time exceed 100 percent of the investor's capital and surplus.[7]

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[4] For purposes of this section, management of an investment portfolio does not include operational management of real property, or industrial or commercial assets.

(ii) A member bank's direct investments under section 25 of the FRA shall be limited to foreign banks and to foreign organizations formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the member bank.

(2) *Investment limit.* In computing the amount that may be invested in any organization under this section, there shall be included any unpaid amount for which the investor is liable and any investments by affiliates.

(3) *Divestiture.* An investor shall dispose of an investment promptly (unless the Board authorizes retention) if:

(i) The organization invested in—

(A) Engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States;

(B) Engages directly or indirectly in other business in the United States that is not permitted to an Edge corporation in the United States except that an investor may hold up to five percent of the shares of a foreign company that engages directly or indirectly in business in the United States that is not permitted to an Edge corporation; or

(C) Engages in impermissible activities to an extent not permitted under paragraph (b)(1) of this section; or

(ii) After notice and opportunity for hearing, the investor is advised by the Board that its investment is inappropriate under the FRA, the BHC Act, or this subpart.

(c) *Investment procedures.*[8] Direct and indirect investments shall be made in accordance with the general consent, prior notice, or specific consent procedures contained in this paragraph. The Board may at any time, upon notice, suspend the general consent and prior notice procedures with respect to any investor or with respect to the acquisition of shares of organizations engaged in particular kinds of activities. An investor shall apply for and receive the prior specific consent of the Board for its initial investment in its first subsidiary or joint venture unless an affiliate has made such an investment. Authority to make investments under prior notice or specific consent shall expire one year from the earliest date on which the authority could have been exercised, unless the Board extends the period.

(1) *General consent.* Subject to the other limitations of this section, the Board grants its general consent for the following:

(i) Any investment in a joint venture or subsidiary, and any portfolio investment, if the total amount invested (in one transaction or in a series of transactions) does not exceed the lesser of:

(A) $15 million; or

(B) 5 percent of the investor's capital and surplus in the case of a member bank, bank holding company, or Edge corporation engaged in banking, or 25 percent of the investor's capital and surplus in the case of an Edge corporation not engaged in banking;

(ii) Any additional investment in an organization in any calendar year so long as

(A) The total amount invested in that calendar year does not exceed 10 percent of the investor's capital and surplus; and

(B) The total amount invested under § 211.5 (including investments made pursuant to specific consent or prior notice) in that calendar year does not exceed cash dividends reinvested under paragraph (c)(1)(iii) of this section plus 10 percent of the investor's direct and indirect historical cost[9] in

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[7] For this purpose, a direct subsidiary of a member bank is deemed to be an investor.

[8] When necessary, the general consent and prior notice provisions of this section constitute the Board's approval under the eighth paragraph of section 25(a) of the FRA for investments in excess of the limitations therein based on capital and surplus.

[9] The "historical cost" of an investment consists of the actual amounts paid for shares or otherwise contributed to the capital accounts, as measured in dollars at the exchange rate in effect at the time each in-

Continued

the organization, which investment authority, to the extent unexercised, may be carried forward and accumulated for up to five consecutive years;

(iii) Any additional investment in an organization in an amount equal to cash dividends received from that organization during the preceding 12 calendar months; or

(iv) Any investment that is acquired from an affiliate at net asset value.

(2) *Prior notice.* An investment that does not qualify under the general consent procedure may be made after the investor has given 45 days' prior written notice to the Board if the total amount to be invested does not exceed 10 percent of the investor's capital and surplus. The Board may waive the 45-day period if it finds immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is accepted. The Board may suspend the period or act on the investment under the Board's specific consent procedures.

(3) *Specific consent.* Any investment that does not qualify for either the general consent or the prior notice procedure shall not be consummated without the specific consent of the Board.

(d) *Permissible activities.* The Board has determined that the following activities are usual in connection with the transaction of banking or other financial operations abroad:

(1) Commercial and other banking activities;

(2) Financing, including commercial financing, consumer financing, mortgage banking, and factoring;

(3) Leasing real or personal property, or acting as agent, broker, or advisor in leasing real or personal property, if the lease serves as the functional equivalent of an extension of credit to the lessee of the property;

(4) Acting as fiduciary;

(5) Underwriting credit life insurance and credit accident and health insurance;

(6) Performing services for other direct or indirect operations of a United States banking organization, including representative functions, sale of long-term debt, name saving, holding assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible domestically for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the BHC Act;

(7) Holding the premises of a branch of an Edge corporation or member bank or the premises of a direct or indirect subsidiary, or holding or leasing the residence of an officer or employee of a branch or subsidiary;

(8) Providing investment, financial, or economic advisory services;

(9) General insurance agency and brokerage;

(10) Data processing;

(11) Managing a mutual fund if the fund's shares are not sold or distributed in the United States or to United States residents and the fund does not exercise managerial control over the firms in which it invests;

(12) Performing management consulting services provided that such services when rendered with respect to the United Sates market shall be restricted to the initial entry;

(13) Underwriting, distributing, and dealing in debt and equity securities outside the United States, provided that no underwriting commitment by a subsidiary of an investor for shares of an issuer may exceed $2 million or represent 20 percent of the capital and surplus or voting shares of an issuer unless the underwriter is covered by binding commitments from subunderwriters or other purchasers;

(14) Operating a travel agency provided that the travel agency is operated in connection with financial services offered abroad by the investor or others;

(15) Engaging in activities that the Board has determined by regulation in 12 CFR 225.25(b) are closely related to

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vestment was made. It does not include subordinated debt or unpaid commitments to invest even though these may be considered investments for other purposes of this part. For investments acquired indirectly as a result of acquiring a subsidiary, the historical cost to the investor is measured as of the date of acquisition of the subsidiary at the net asset value of the equity interest in the case of subsidiaries and joint ventures, and in the case of portfolio investments, at the book carrying value.

banking under section 4(c)(8) of the BHC Act; and

(16) With the Board's specific approval, engaging in other activities that the Board determines are usual in connection with the transaction of the business of banking or other financial operations abroad and are consistent with the FRA or the BHC Act.

(e) *Debts previously contracted.* Shares or other ownership interests acquired to prevent a loss upon a debt previously contracted in good faith shall not be subject to the limitations or procedures of this section; however, they shall be disposed of promptly but in no event later than two years after their acquisition, unless the Board authorizes retention for a longer period.

§ 211.6 Lending limits and capital requirements.

(a) *Acceptances of Edge corporations*—(1) *Limitations.* An Edge corporation shall be and remain fully secured for (i) all acceptance outstanding in excess of 200 percent of its capital and surplus; and (ii) all acceptances outstanding for any one person in excess of 10 percent of its capital and surplus. These limitations apply only to acceptances of the types described in paragraph 7 of section 13 of the FRA (12 U.S.C. 372).

(2) *Exceptions.* These limitations do not apply if the excess represents the international shipment of goods and the Edge corporations (i) is fully covered by primary obligations to reimburse it that are guaranteed by banks or bankers, or (ii) is covered by participation agreements from other banks, as such agreements are described in § 250.165 of this chapter.

(b) *Loans and extensions of credit to one person.*—(1) *Limitations.* Except as the Board may otherwise specify:

(i) The total loans and extensions of credit outstanding to any person by an Edge corporation engaged in banking and its direct or indirect subsidiaries may not exceed 15 percent of the Edge corporation's capital and surplus;[10] and

(ii) The total loans and extensions of credit to any person by a foreign bank or Edge corporation subsidiary of a member bank, and by majority-owned subsidiaries of a foreign bank or Edge corporation, when combined with the total loans and extensions of credit to the same person by the member bank and its majority-owned subsidiaries, may not exceed the member bank's limitation on loans and extensions of credit to one person.

(2) *"Loans and extensions of credit"* means all direct or indirect advances of funds to a person[11] made on the basis of any obligation of that person to repay the funds. These shall include acceptances outstanding not of the types described in paragraph 7 of section 13 of the FRA (12 U.S.C. 372); any liability of the lender to advance funds to or on behalf of a person pursuant to a guaranteed, standby letter of credit, or similar agreements; investments in the securities of another organization except where the organization is a subsidiary, and any underwriting commitments to an issuer of securities where no binding commitments have been secured from subunderwriters or other purchasers.

(3) *Exceptions.* The limitations of paragraph (b)(1) of this section do not apply to:

(i) Deposits with banks and federal funds sold;

(ii) Bills or drafts drawn in good faith against actual goods and on which two or more unrelated parties are liable;

(iii) Any bankers' acceptance of the kind described in paragraph 7 of section 13 of the FRA that is issued and outstanding;

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[10] For purposes of this subsection, "subsidiary" includes subsidiaries controlled by the Edge corporation but does not include companies otherwise controlled by affiliates of the Edge corporation.

[11] In the case of a foreign government, these include loans and extensions of credit to the foreign government's departments or agencies deriving their current funds principally from general tax revenues. In the case of a partnership or firm, these include loans and extensions of credit to its members and, in the case of a corporation, these include loans and extensions of credit to the corporation's affiliates where the affiliate incurs the liability for the benefit of the corporation.

(iv) Obligations to the extent secured by cash collateral or by bonds, notes, certificates of indebtedness, or Treasury bills of the United States;

(v) Loans and extensions of credit that are covered by bona fide participation agreements; or

(vi) Obligations to the extent supported by the full faith and credit of the following:

(A) The United States or any of its departments, agencies, establishments, or wholly-owned corporations (including obligations to the extent insured against foreign political and credit risks by the Export-Import Bank of the United States or the Foreign Credit Insurance Association), the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association, the Inter-American Development Bank, the African Development Bank, or the Asian Development Bank;

(B) Any organization if at least 25 percent of such an obligation or of the total credit is also supported by the full faith and credit of, or participated in by, any institution designated in paragraph (b)(3)(v)(A) of this section in such manner that default to the lender will necessarily include default to that entity. The total loans and extensions of credit under this subparagraph to any person shall at not time exceed 100 percent of the capital and surplus of the Edge corporation.

(c) *Capitalization.* An Edge corporation shall at all times be capitalized in an amount that is adequate in relation to the scope and character of its activities. In the case of an Edge corporation engaged in banking, its capital and surplus shall be not less than 7 percent of risk assets. For this purpose, subordinated capital notes or debentures, in an amount not to exceed 50 percent of non-debt capital, may be included for determining capital adequacy in the same manner as for a member bank; risk assets shall be deemed to be all assets on a consolidated basis other than cash, amounts due from banking institutions in the United States, United States Government securities, and Federal funds sold.

§ 211.7 Supervision and reporting.

(a) *Supervision*—(1) *Foreign branches and subsidiaries.* Organizations conducting international banking operations under this Subpart shall supervise and administer their foreign branches and subsidiaries in such a manner as to ensure that their operations conform to high standards of banking and financial prudence. Effective systems of records, controls, and reports shall be maintained to keep management informed of their activities and condition. Such systems should provide, in particular, information on risk assets, liquidity management, and operations of controls and conformance to management policies. Reports on risk assets should be sufficient to permit an appraisal of credit quality and assessment of exposure to loss, and for this purpose provide full information on the condition of material borrowers. Reports on the operations of controls should include internal and external audits of the branch or subsidiary.

(2) *Joint ventures.* Investors shall maintain sufficient information with respect to joint ventures to keep informed of their activities and condition. Such information shall include audits and other reports on financial performance, risk exposure, management policies, and operations of controls. Complete information shall be maintained on all transactions with the joint venture by the investor and its affiliates.

(3) *Availability of reports to examiners.* The reports and information specified in paragraph (a) (1) and (2) of this section shall be made available to examiners of the appropriate bank supervisory agencies.

(b) *Examinations.* Examiners appointed by the Board shall examine each Edge corporation once a year. An Edge corporation shall make available to examiners sufficient information to assess its condition and operations and the condition and activities of any organization whose shares it holds.

(c) *Reports*—(1) *Reports of condition.* Each Edge corporation shall make reports of condition to the Board at such times and in such form as the Board may prescribe. The

Board may require that statements of condition or other reports be published or made available for public inspection.

(2) *Foreign operations.* Edge and Agreement corporations, member banks, and bank holding companies shall file such reports on their foreign operations as the Board may require.

(3) *Acquisition or disposition of shares.* A member bank, Edge or Agreement corporation or a bank holding company shall report in a manner prescribed by the Board any acquisition or disposition of shares.

(d) *Filing and processing procedures.* (1) Unless otherwise directed by the Board, applications, notifications, and reports required by this part shall be filed with the Federal Reserve Bank of the district in which the parent bank or bank holding company is located or, if none, the Federal Reserve Bank of the district in which the applying or reporting institution is located. Instructions and forms for such applications, notifications and reports are available from the Federal Reserve Banks.

(2) The Board shall act on an application or notification under this Subpart within 60 calendar days after the Reserve Bank has accepted the application or notification unless the Board notifies the investor that the 60-day period is being extended and states the reasons for the extension.

Subpart B—Foreign Banking Organizations

§ 211.21 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) ("BHCA"); and the International Banking Act of 1978 (92 Stat. 607) ("IBA").

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHCA and the IBA. It applies to foreign banks and foreign banking organizations with respect to the limitations on interstate banking under section 5 of the IBA (12 U.S.C. 3103); and to foreign banks and foreign bank holding companies with respect to the exemptions from the nonbanking prohibitions of the BHCA and the IBA afforded by sections 2(h) and 4(c)(9) of the BHCA (12 U.S.C. 1841(h) and 1843(c)(9)).

[45 FR 67058, Oct. 9, 1980]

§ 211.22 Interstate banking operations of foreign banking organizations.

(a) *Definitions.* The definitions of § 211.2 in Subpart A apply to this section subject to the following:

(1) "Agency" means any office or any place of business of a foreign bank located in any State of the United States or the District of Columbia at which credit balances are maintained, checks are paid, or money is lent, but at which deposits may not be accepted from a citizen or resident of the United States. Obligations shall not be considered credit balances unless they:

(i) Are incidental to, or arise out of the exercise of other lawful banking powers;

(ii) Are to serve a specific purpose;

(iii) Are not solicited from the general public;

(iv) Are not used to pay routine operating expenses in the United States such as salaries, rent, or taxes;

(v) Are withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and

(vi) Are drawn upon in a manner reasonable in relation to the size and nature of the account.

(2) "Banking subsidiary," with respect to a specified foreign bank, means a bank that is a subsidiary as the terms "bank" and "subsidiary" are defined in section 2 of the BHCA (12 U.S.C. 1841).

(3) "Commercial lending company" means any organization, other than a bank or an organization operating under section 25 of the FRA, organized under the laws of any State of the United States or the District of Columbia, that maintains credit balances as may be maintained by an agency and engages in the business of making commercial loans.

(4) "Domestic branch" means any office or any place of business of a foreign bank located in any State of the United States or the District of Co-

lumbia that may accept domestic deposits and deposits that are incidental to or for the purpose of carrying out transactions in foreign countries.

(5) "Foreign Bank," for purposes of this section, is an organization that is organized under the laws of a foreign country and that engages in the business of banking.

(b) *Determination of home State.* (1) A foreign bank selecting its home State shall do so by filing with the Board a declaration of home State within 180 days of the effective date of this subpart. In the absence of such selection, the Board shall designate a foreign bank's home State. Within one year after the home State of a foreign bank has been determined, unless the Board authorizes a longer period:

(i) The foreign bank shall close domestic branches whose activities are not permissible under section 5(b) of the IBA, convert such domestic branches to agencies, or enter into an agreement with the Board regarding the deposits of such branches as prescribed in section 5(a) of the IBA; and

(ii) The foreign bank shall divest voting shares of interests in, or assets of banks that are not permissible under section 5(b) of the IBA.

(2) A foreign bank that currently does not operate a domestic branch or banking subsidiary shall not be required to select a home State and shall not have its home State designated by the Board.

(3) A foreign bank (except a foreign bank to which paragraph (b)(5) of this section applies) that has any combination of domestic branches, banking subsidiaries, agencies, or commercial lending company subsidiaries that, before July 27, 1978, were established or applies for in more than one State may select its home State only from those States in which the foreign bank has continuously operated such offices.

(4) A foreign bank that established or applied for one domestic branch or one banking subsidiary before July 27, 1978, and that was not otherwise engaged in banking in the United States on that date, shall have as its home State the State in which such domestic branch or banking subsidiary is located.

(5) A foreign bank that before July 27, 1978, had no domestic branches or banking subsidiaries or had only agencies or commercial lending companies, and, after that date, has established or establishes any domestic branch or banking subsidiary shall have as its home State that State in which its initial domestic branch or banking subsidiary is located.

(c) *Change of home State.* A foreign bank may change its home State once if:

(1) 30 days' prior notification of the proposed change is filed with the Board; and

(2) Domestic branches established and investments in banks acquired in reliance on its original home State selection are conformed to those that would have been permissible had the new home State been selected as its home State originally.

(d) *Bank mergers.* (1) A foreign bank with one or more banking subsidiaries that selects as its home State a State other than that in which a banking subsidiary is located, and that proposes to acquire through its subsidiary bank all or substantially all of the assets of a bank larger than its subsidiary bank (in terms of deposits) located outside the foreign bank's home State shall give 60 days' notification to the Board prior to consummation of the proposed transaction.

(2) If, after receiving the notification, the Board makes a preliminary determination within that period that the proposed acquisition would be inconsistent with the foreign bank's home State selection, the foreign bank shall:

(i) Redesignate as its home State the State in which its subsidiary bank is located; or

(ii) Show cause why in the facts and circumstances of its case its home State should not be redesignated (the foreign bank's submission may include a request for a hearing).

(3) On the basis of information available, the Board shall:

(i) Direct the foreign bank redesignate as its home State the State in which its subsidiary bank is located; or

(ii) Take no action with respect to the foreign bank's home State.

(4) Factors to be considered by the Board in making its preliminary and final determinations include the size of the proposed acquisition relative to the foreign bank's other operations in the United States and the ability of the foreign bank to change its home State.

(e) *Attribution of home State.* (1) A foreign bank or organization and the other foreign banks or organizations over which it exercises actual control shall be regarded as one foreign bank and shall be entitled to one home State.

(2) Actual control shall be conclusively presumed to exist in the case of a bank or organization that owns or controls a majority of the voting shares of another bank or organization.

(3) Where it appears to the Board that a foreign bank or organization exercises actual control over the management or policies of another foreign bank or organization, the Board may inform the parties that a preliminary determination of control has been made on the basis of the facts summarized in the communication. In the event of a preliminary determination of control by the Board, the parties shall within 30 days (or such longer period as may be permitted by the Board):

(i) Indicate to the Board a willingness to terminate the control relationship; or

(ii) Set forth such facts and circumstances as may support the contention that actual control does not exist (and may request a hearing to contest the Board's preliminary determination); or

(iii) Accede to the Board's preliminary determination, in which event the parties shall be regarded as one foreign bank and shall be entitled to one home State.

[45 FR 67058, Oct. 9, 1980]

§ 211.23 Nonbanking activities of foreign banking organizations.

(a) *Definitions.* The definitions of § 211.2 in Subpart A apply to this section subject to the following:

(1) "Directly or indirectly" when used in reference to activities or investments of a foreign banking organization means activities or investments of the foreign banking organization or of any subsidiary of the foreign banking organization.

(2) "Foreign banking organization" means a foreign bank (as defined in section 1 (b)(7) of the IBA) that operates a branch, agency, or commercial lending company subsdiary in the United States or that controls a bank in the United States; and a company of which such foreign bank is a subsidiary.

(3) "Subsidiary" means any organization 25 percent or more of whose voting shares is directly or indirectly owned, controlled or held with power to vote by a foreign banking organization, or which is otherwise controlled or capable of being controlled by a foreign banking organization.

(b) *Qualifying foreign banking organizations.* Unless specifically made eligible for the exemptions by the Board, a foreign banking organization shall qualify for the exemptions afforded by this section only if, disregarding its United States banking, more than half of its worldwide business is banking; and more than half of its banking business is outside the United States.[1] In order to qualify, a foreign banking organization shall:

(1) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed total worldwide nonbanking assets;

(ii) Revenues derived from business of banking outside the United States exceed total revenues derived from its worldwide nonbanking business; or

(iii) Net income derived from the business of banking outside the United States exceeds total net income derived from its worldwide nonbanking businesses; and

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[1] None of the assets, revenues, or net income, whether held or derived directly or indirectly, of a subsidiary bank, branch, agency, commercial lending company, or other company engaged in the business of banking in the United States (including any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands) shall be considered held or derived from the business of banking "outside the United States."

(2) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed banking assets held in the United States;

(ii) Revenues derived from the business of banking outside the United States exceed revenues derived from the business of banking in the United States; or

(iii) Net income derived from the business of banking outside the United States exceeds net income derived from the business of banking in the United States.

(c) *Determining assets, revenues, and net income.* (1) For purposes of paragraph (b) of this section, the total assets, revenues, and net income of an organization may be determined on a consolidated or combined basis. Assets, revenues and net income of companies in which the foreign banking organization owns 50 per cent or more of the voting shares shall be included when determining total assets, revenues, and net income. The foreign banking organization may include assets, revenues, and net income of companies in which it owns 25 per cent or more of the voting shares if all such companies within the organization are included;

(2) Assets devoted to, or revenues or net income derived from, activities listed in § 211.5(d) shall be considered banking assets, or revenues or net income derived from the banking business, when conducted within the foreign banking organization by a foreign bank or its subsidiaries.

(d) *Loss of eligibility for exemptions.* A foreign banking organization that qualified under paragraph (b) of this section or an organization that qualified as a "foreign bank holding company" under § 225.4(g) of Regulation Y (12 CFR 225.4(g) (1980)) [3] shall cease to be eligible for the exemptions of this section if it fails to meet the requirements of paragraph (b) for two consecutive years as reflected in its Annual Reports (FR Y-7) filed with the Board. A foreign banking organization that ceases to be eligible for the exemptions may continue to engage in activities or retain investments commenced or acquired prior to the end of the first fiscal year for which its Annual Report reflects nonconformance with paragraph (b) of this section. Activities commenced or investments made after that date shall be terminated or divested within three months of the filing of the second Annual Report unless the Board grants consent to continue the activity or retain the investment under paragraph (e) of this section.

(e) *Specific determination of eligibility for nonqualifying foreign banking organizations.* A foreign banking organization that does not qualify under paragraph (b) of this section for the exemptions afforded by this section, or that has lost its eligibility for the exemptions under paragraph (d) of this section, may apply to the Board for a specific determination of eligibility for the exemptions. A foreign banking organization may apply for a specific determination prior to the time it ceases to be eligible for the exemptions afforded by this section. In determining whether eligibility for the exemptions would be consistent with the purposes of the BHCA and in the public interest, the Board shall consider the history and the financial and managerial resources of the organization; the amount of its business in the United States; the amount, type and location of its nonbanking activities; and whether eligibility of the foreign banking organization would result in undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Such determination shall be subject to any conditions and limitations imposed by the Board.

(f) *Permissible activities and investments.* A foreign banking organization that qualifies under paragraph (b) of this section may:

(1) Engage in activities of any kind outside the United States;

(2) Engage directly in activities in the United States that are incidental to its activities outside the United States;

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[3] "'[F]oreign bank holding company' means a bank holding company organized under the laws of a foreign country, more than half of whose consolidated assets are located or consolidated revenues derived, outside the United States." (12 CFR 225.4(g)(iii) (1980)).

(3) Own or control voting shares of any company that is not engaged, directly or indirectly, in any activities in the United States other than those that are incidental to the international or foreign business of such company;

(4) Own or control voting shares of any company in a fiduciary capacity under circumstances that would entitle such shareholding to an exemption under section 4(c)(4) of the BHCA if the shares were held or acquired by a bank;

(5) Own or control voting shares of a foreign company that is engaged directly or indirectly in business in the United States other than that which is incidental to its international or foreign business, subject to the following limitations:

(i) More than 50 percent of the foreign company's consolidated assets shall be located, and consolidated revenues derived from, outside the United States;

(ii) The foreign company shall not directly underwrite, sell, or distribute, nor own or control more than 5 percent of the voting shares of a company that underwrites, sells, or distributes securities in the United States except to the extent permitted bank holding companies;

(iii) If the foreign company is a subsidiary of the foreign banking organization, the foreign company must be, or control, an operating company and its direct or indirect activities in the United States shall be subject to the following limitations:

(A) The foreign company's activities in the United States shall be the same kind of activities or related to the activities engaged in directly or indirectly by the foreign company abroad as measured by the "establishment" categories of the Standard Industrial Classification (SIC) (an activity in the United States shall be considered related to an activity outside the United States if it consists of supply, distribution or sales in furtherance of the activity);

(B) The foreign company may engage in activities in the United States that consist of banking or financial operations, or types of activities permitted by regulation or order under section 4(c)(8) of the BHCA, only with the prior approval of the Board. Activities within Division H (Finance, Insurance, and Real Estate) of the SIC shall be considered banking or financial operations for this purpose, with the exception of acting as operators of nonresidential buildings (SIC 6512), operators of apartment buildings (SIC 6513), operators of dwellings other than apartment buildings (SIC 6514), and operators of residential mobile home sites (SIC 6515); and operating title abstract offices (SIC 6541). In addition, the following activities shall be considered banking or financial operations and may be engaged in only with the approval of the Board under subsection (g): computer and data processing services (SIC 7372, 7374 and 7379); management consulting (SIC 7392); certain rental and leasing activities (SIC 7394, 7512, 7513 and 7519); accounting, auditing and bookkeeping services (SIC 8931); and arrangement of passenger transportation (SIC 4722).

(g) *Exemptions under section 4(c)(9) of the BHCA.* A foreign organization that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(9) of the BHCA may apply to the Board for such a determination by submitting to the Reserve Bank of the district in which its banking operations in the United States are principally conducting a letter setting forth the basis for that opinion.

(h) *Reports.* (1) The foreign banking organization shall inform the Board through the organization's Reserve Bank within 30 days after the close of each quarter of all shares of companies engaged, directly or indirectly, in activities in the United States that were acquired during such quarter under the authority of this section. The foreign banking organization shall also report any direct activities in the United States commenced during such quarter by a foreign subsidiary of the foreign banking organization. This information shall (unless previously furnished) include a brief description of the nature and scope of each company's business in the United States, including the 4-digit SIC numbers of the activities in which the company engages. Such information shall also include the 4-digit SIC numbers of the direct parent of any U.S. company acquired, together with a statement of total assets and revenues of the direct parent.

(2) If any required information is unknown and not reasonably available to the foreign banking organization, either because obtaining it would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of a company that is not controlled by the organizations, the organization shall (i) give such information on the subject as it possesses or can reasonably acquire together with the sources thereof; and (ii) include a statement either showing that unreasonable effort or expense would be involved or indicating that the company whose shares were acquired is not controlled by the organization and stating the result of a request for information.

(12 U.S.C. 3101 *et seq.*; 12 U.S.C. 1841 *et seq.*; sec. 25(a) of the Federal Reserve Act (12 U.S.C. 611 *et seq.*)

[45 FR 81540, Dec. 11, 1980, as amended at 47 FR 51095, Nov. 12, 1982; 50 FR 39986, Oct. 1, 1985]

Subpart C—Export Trading Companies

AUTHORITY: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841, *et seq.*); the International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); and the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235 (1982)).

SOURCE: 48 FR 26446, June 8, 1983, unless otherwise noted.

§ 211.31 Authority, purpose and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) ("BHC Act") and the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235 (1982)) ("BESA").

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act and the BESA, the latter statute being designed to increase U.S. exports by encouraging investments and participation in export trading companies by bank holding companies and the specified investors. The provisions of this subpart apply to:

(1) Bank holding companies as defined in section 2 of the BHC Act (12 U.S.C. 1841(a));

(2) Edge and Agreement corporations, as described in § 211.1(b) of this part, that are subsidiaries of bank holding companies but are not subsidiaries of banks;

(3) Bankers' banks as described in section 4(c)(14)(F)(iii) of the BHC Act (12 U.S.C. 1843(c)(14)(F)(iii)); and

(4) Foreign banking organizations as defined in § 211.23(a)(2) of this part. These entities are hereinafter referred to as "eligible investors."

§ 211.32 Definitions.

The definitions of § 211.2 in Subpart A apply to this subpart subject to the following:

(a) "Export trading company" means a company that is exclusively engaged in activities related to international trade and, by engaging in one or more export trade services, derives more than one-half its revenues in each consecutive two-year period from the export of, or from facilitating the export of, goods and services produced in the United States by persons other than the export trading company or its subsidiaries. For purposes of this subsection, revenues shall include net sales revenues from exporting, importing, or third party trade in goods by the export trading company for its own account and gross revenues derived from all other activities of the export trading company.

(b) The terms "bank," "company" and "subsidiary" have the same meanings as those contained in section 2 of the BHC Act (12 U.S.C. 1841).

§ 211.33 Investments and extensions of credit.

(a) *Amount of investments.* In accordance with the procedures of § 211.34 of this subpart, an eligible investor may invest no more than five per cent of its consolidated capital and surplus in one or more export trading companies, except that an Edge or Agreement corporation not engaged in banking may invest as much as 25 per cent of its consolidated capital and surplus but no more than five per cent of the consolidated capital and surplus of its parent bank holding company.

(b) *Extensions of credit*—(1) *Amount.* An eligible investor in an export trading company or companies may extend credit directly or indirectly to the export trading company or companies in a total amount that at no time exceeds 10 per cent of the investor's consolidated capital and surplus.

(2) *Terms.* An eligible investor in an export trading company may not extend credit directly or indirectly to the export trading company or any of its customers or to any other investor holding 10 per cent or more of the shares of the export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extensions of credit shall not involve more than the normal risk of repayment or present other unfavorable features. For the purposes of this provision, an investor in an export trading company includes any affiliate of the investor.

(3) *Collateral requirements.* Covered transactions between a bank and an affiliated export trading company in which a bank holding company has invested pursuant to this subpart are subject to the collateral requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c), except where a bank issues a letter of credit or advances funds to an affiliated export trading company solely to finance the purchase of goods for which:

(i) The export trading company has a bona fide contract for the subsequent sale of the goods; and

(ii) The bank has a security interest in the goods or in the proceeds from their sale at least equal in value to the letter of credit or the advance.

§ 211.34 Procedures for filing and processing notices.

(a) *Filing notice*—(1) *Prior notice of investment.* An eligible investor shall give the Board 60 days' prior written notice of any investment in an export trading company.

(2) *Subsequent notice.* An eligible investor shall give the Board 60 days' prior written notice of changes in the activities of an export trading company that is a subsidiary of the investor if the export trading company expands its activities beyond those described in the initial notice to include:

(i) Taking title to goods where the export trading company does not have a firm order for the sale of those goods;

(ii) Product research and design;

(iii) Product modification, or

(iv) Activities not specifically covered by the list of activities contained in section 4(c)(14)(F)(ii) of the BHC Act. Such an expansion of activities shall be regarded as a proposed investment under this subpart.

(b) *Time period for Board action.* (1) A proposed investment that has not been disapproved by the Board may be made 60 days after the Reserve Bank accepts the notice for processing. A proposed investment may be made before the expiration of the 60-day period if the Board notifies the investor in writing of its intention not to disapprove the investment.

(2) The Board may extend the 60-day period for an additional 30 days if the Board determines that the investor has not furnished all necessary information or that any material information furnished is substantially inaccurate. The Board may disapprove an investment if the necessary information is provided within a time insufficient to allow the Board reasonably to consider the information received.

(3) Within three days of a decision to disapprove an investment, the Board shall notify the investor in writing and state the reasons for the disapproval.

(c) *Time period for investment.* An investment in an export trading company that has not been disapproved shall be made within one year from the date of the notice not to disapprove, unless the time period is extended by the Board or by the appropriate Federal Reserve Bank.

[48 FR 26448, June 8, 1983, as amended at 48 FR 56934, Dec. 27, 1983]

Subpart D—International Lending Supervision

SOURCE: 49 FR 5592, Feb. 13, 1984, unless otherwise noted.

§ 211.41 Authority, purpose, and scope

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the International Lending Supervision Act of 1983 (Pub. L. 98-181, Title IX, 97 Stat. 1153) ("International Lending Supervision Act"); the Federal Reserve Act (12 U.S.C. 221 *et seq.*) ("FRA"), and the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) ("BHC Act").

(b) *Purpose and scope.* This subpart is issued in furtherance of the purposes of the International Lending Supervision Act. It applies to State banks that are members of the Federal Reserve System ("State member banks"); corporations organized under section 25(a) of the FRA (12 U.S.C. 611-631) ("Edge Corporations"); corporations operating subject to an agreement with the Board under section 25 of the FRA (12 U.S.C. 601-604a) ("Agreement Corporations"); and bank holding companies (as defined in section 2 of the BHC Act (12 U.S.C. 1841(a)) but not including a bank holding company that is a foreign banking organization as defined in § 211.23(a)(2) of this regulation.

§ 211.42 Definitions.

For the purposes of this subpart:

(a) "Banking institution" means a State member bank; bank holding company; Edge Corporation and Agreement Corporation engaged in banking. "Banking institution" does not include a "foreign banking organization" as defined in § 211.23(a)(2).

(b) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(c) "International assets" means those assets required to be included in banking institutions' "Country Exposure Report" forms (FFIEC No. 009).

(d) "International loan" means a loan as defined in the instructions to the "Report of Condition and Income" for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(e) "International syndicated loan" means a loan characterized by the formation of a group of "managing" banking institutions and, in the usual case, assumption by them of underwriting commitments and participation in the loan by other banking institutions.

(f) "Loan agreement" means the documents signed by all of the parties to a loan, containing the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower.

(g) "Restructed international loan" means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) the terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) a new loan is made to, or for the benefit or, the borrower, enabling the borrower to service or refinance the existing debt.

(h) "Transfer risk" means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

[49 FR 5592, Feb. 13, 1984, as amended at 49 FR 12197, Mar. 29, 1984]

§ 211.43 Allocated transfer risk reserve.

(a) *Establishment of Allocated Transfer Risk Reserve.* A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the Board in accordance with this section.

(b) *Procedures and Standards*—(1) *Joint agency determination.* At least annually, the Federal banking agencies shall determine jointly, based on the standards set forth in paragraph (b)(2) of this section, the following:

(i) Which international assets subject to transfer risk warrant establishment of an ATRR;

(ii) The amount of the ATRR for the specified assets; and

(iii) Whether an ATRR established for specified assets may be reduced.

(2) *Standards for requiring ATRR*—(i) *Evaluation of assets.* The Federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(A) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(*1*) Such obligors have failed to make full interest payments on external indebtedness;

(*2*) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(*3*) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(B) Whether no definite prospects exist for the orderly restoration of debt service.

(ii) *Determination of amount of ATRR.* (A) In determining the amount of the ATRR, the Federal banking agencies shall consider:

(*1*) The length of time the quality of the asset has been impaired;

(*2*) Recent actions taken to restore debt service capability;

(*3*) Prospects for restored asset quality; and

(*4*) Such other factors as the Federal banking agencies may consider relevant to the quality of the asset.

(B) The initial year's provision for the ATRR shall be ten percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be fifteen percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies.

(3) *Board notification.* Based on the joint agency determinations under paragraph (b)(1) of this section, the Board shall notify each banking institution holding assets subject to an ATRR:

(i) Of the amount of the ATRR to be established by the institution for specified international assets; and

(ii) That an ATRR established for specified assets may be reduced.

(c) *Accounting treatment of ATRR*—(1) *Charge to current income.* A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(2) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Possible Loan Losses, and shall deduct the ATRR from "gross loans and leases" to arrive at "net loans and leases." The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(3) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. For banks, consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of *Consolidated Reports of Condition and Income* (FFIEC Nos. 031, 032, 033 and 034). For bank holding companies, the consolidation shall be in accordance with the principles set forth in the "Instructions to the Bank Holding Company Financial Supplement to Report F.R. Y-6" (Form F.R. Y-9). Edge and Agreement corporations engaged in banking shall report in accordance with instructions for preparation of the Report of Condition for Edge and Agreement Corporations (Form F.R. 2886b).

(4) *Alternative accounting treatment.* A banking institution need not

establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for Possible Loan Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset. However, the Allowance for Possible Loan Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institutions's loan portfolio.

(5) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the Board or, at any time, by writing down such amount of the international asset for which the ATRR was established.

§ 211.44 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98-181, 97 Stat. 1153) (ILSA), a banking institution shall submit to the Board, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA, a banking institution shall submit to the Board information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the Board on request.

(b) *Procedures.* The format, content and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the Federal banking agencies. The requirements to be prescribed by the agencies may include changes to existing reporting forms (such as the Country exposure Report, form FFIEC No. 009) or such other requirements as the agencies deem appropriate. The agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the agencies' judgment, have *de minimis* holdings of international assets.

(c) *Reservation of Authority.* Nothing contained in this rule shall preclude the Board from requiring from a banking institution such additional or more frequent information on the institution's holding of international assets as the Board may consider necessary.

[49 FR 5587, Feb. 13, 1984]

§ 211.45 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured international loan unless all fees exceeding the banking institution's administrative costs, as described in paragraph (c)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(b) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method during the loan period, the straight-line method shall be used.

(c) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an al-

locable portion of salaries and related benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(d) *Fees received by managing banking institutions in an international syndicated loan.* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentation shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(e) *Loan commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(f) *Agency fees.* Fees paid to an agent banking institution for administrative services in an international syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

[49 FR 12197, Mar. 29, 1984]

INTERPRETATIONS

§ 211.601 Status of certain offices for purposes of the International Banking Act restrictions on interstate banking operations.

The Board has considered the question of whether a foreign bank's California office that may accept deposits from certain foreign sources (e.g., a United States citizen residing abroad) is a branch or an agency for the purposes of the grandfather provisions of section 5 of the International Banking Act of 1978 (12 U.S.C. 3103(b)). The question has arisen as a result of the definitions in the International Banking Act of "branch" and "agency," and the limited deposit-taking capabilities of certain California offices of foreign banks.

The International Banking Act defines "agency" as "any office * * * at which deposits may not be accepted from citizens or residents of the United States," and defines "branch" as "any office * * * of a foreign bank * * * at which deposits are received" (12 U.S.C. 3101(1) and (3)). Offices of foreign banks in California prior to the International Banking Act were generally prohibited from accepting deposits by the requirement of State law that such offices obtain Federal deposit insurance (Cal. Fin. Code 1756); until the passage of the International Banking Act an office of a foreign bank could not obtain such insurance. California law, however, permits offices of foreign banks, with the approval of the Banking Department, to accept deposits from any person that resides, is domiciled, and maintains its principal place of business in a foreign country (Cal. Fin. Code 1756.2). Thus, under a literal reading of the definitions of "branch" and "agency" contained in the International Banking Act, a foreign bank's California office that accepts deposits from certain foreign sources (e.g., a U.S. citizen residing abroad), is a branch rather than an agency.

Section 5 of the International Banking Act establishes certain limitations on the expansion of the domestic deposit-taking capabilities of a foreign bank outside its home State. It also grandfathers offices established or applied for prior to July 27, 1978, and permits a foreign bank to select its home State from among the States in which it operated branches and agencies on the grandfather date. If a foreign bank's office that was established or applied for prior to June 27, 1978, is a "branch" as defined in the International Banking Act, then it is grandfathered as a branch. Accordingly, a foreign bank could designate a State other than California as its home State and subsequently convert its California office to a full domestic deposit-taking facility by obtaining Federal deposit insurance. If, however, the office is determined to be an "agency," then it is grandfathered as such and the foreign bank may may not expand its deposit-taking capabilities in California without declaring California its home State.

In the Board's view, it would be inconsistent with the purposes and the legislative history of the International Banking Act to enable a foreign bank to expand its domestic interstate deposit-taking capabilities by grandfathering these California offices as branches because of their ability to receive certain foreign source deposits. The Board also notes that such deposits are of the same general type that may be received by an Edge Corporation and, hence in accordance with section 5(a) of the International Banking Act, by branches established and operated outside a foreign bank's home State. It would be inconsistent with the structure of the interstate banking provisions of the International Banking Act to grandfather as full deposit-taking offices those facilities whose activities have been determined by Congress to be appropriate for a foreign bank's out-of-home State branches.

Accordingly, the Board, in administering the interstate banking provisions of the IBA, regards as agencies those offices of foreign banks that do not accept domestic deposits but that may accept deposits from any person that resides, is domiciled, and maintains its principal place of business in a foreign country.

[45 FR 67309, Oct. 10, 1980]

§ 211.602 Investments by United States Banking Organizations in Foreign Companies that Transact Business in the United States.

Section 25(a) of the Federal Reserve Act (12 U.S.C. 611, the "Edge Act") provides for the establishment of corporations to engage in international or foreign banking or other international or foreign financial operations ("Edge Corporations"). Congress has declared that Edge Corporations are to serve the purpose of stimulating the provision of international banking and financing services throughout the United States and are to have powers sufficiently broad to enable them to compete effectively with foreign-owned institutions in the United States and abroad. The Board was directed by the International Banking Act of 1978 (12 U.S.C. 3101) to revise its regulations governing Edge Corporations in order to accomplish these and other objectives and was further directed to modify or eliminate any interpretations that impede the attainment of these purposes.

One of the powers of Edge Corporations is that of investing in foreign companies. Under the relevant statutes, however, an Edge Corporation is prohibited from investing in foreign companies that engage in the general business of buying or selling goods, wares, merchandise or commodities in the United States. In addition, an Edge Corporation may not invest in foreign companies that transact any business in the United States that is not, in the Board's judgment, "incidental" to its international or foreign business. The latter limitation also applies to investments by bank holding companies (12 U.S.C. 1843(c)(13)) and member banks (12 U.S.C. 601).

The Board has been asked to determine whether an Edge Corporation's minority investment (involving less than 25 percent of the voting shares) in a foreign company would continue to be permissible after the foreign company establishes or acquires a United States subsidiary that engages in domestic activities that are closely related to banking. The Board has also been asked to determine whether an Edge Corporation's minority investment in a foreign bank would continue to be permissible after the foreign bank establishes a branch in the United States that engages in domestic banking activities. In the latter case, the branch would be located outside the State in which the Edge Corporation and its parent bank are located.

In the past the Board, in exercising its discretionary authority to determine those activities that are permissible in the United States, has followed the policy that an Edge Corporation could not hold even a minority interest in a foreign company that engaged, directly or indirectly, in any purely domestic business in the United States. The United States activities considered permissible were those internationally related activities that Edge Corporations may engage in directly. If this policy were applied to the subject requests, the Edge Corporations would be required to divest their interests in the foreign companies notwithstanding the fact that, in each case, the Edge Corporation, as a minority investor, did not control the decision to undertake activities in the United States, and that even after the United States activities are undertaken the business of the foreign company will remain predominantly outside the United States.

International banking and finance have undergone considerable growth and change in recent years. It is increasingly common, for example, for United States institutions to have direct or indirect offices in foreign countries and to engage in activities at those offices that are domestically as well as internationally oriented. In this climate, United States banking organizations would be placed at a competitive disadvantage if their minority investments in foreign companies were limited to those companies that do no domestic business in the United States. Moreover, continued adherence to the existing policy would be contrary to the declaration in the International Banking Act of 1978 that Edge Corporations' powers are to be sufficiently broad to enable them to compete effectively in the United States and abroad. Furthermore, where the activities to be conducted in the United States by the foreign company are banking or closely related to banking, it does not appear that any regulatory or supervisory purpose would be served by prohibiting a minority investment in the foreign firm by a United States banking organization.

In view of these considerations, the Board has reviewed its policy relating to the activities that may be engaged in in the United States by foreign companies (including foreign banks) in which Edge Corporations, member banks, and bank holding companies invest. As a result of that review, the Board has determined that it would be appropriate to interpret sections 25 and 25(a)of the Federal Reserve Act (12 U.S.C. 601, 611) and section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843(c)(13)) generally to allow United States banking organizations, with the prior consent of the Board, to acquire and hold investments in foreign companies that do business in the United States subject to the following conditions:

(1) The foreign company is engaged predominantly in business outside the United States or in internationally related activities in the United States;*

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*This condition would ordinarily not be met where a foreign company merely main-

Continued

(2) the direct or indirect activities of the foreign company in the United States are either banking or closely related to banking; and (3) the United States banking organization does not own 25 percent or more of the voting stock of, or otherwise control, the foreign company. In considering whether to grant its consent for such investments, the Board would also review the proposals to ensure that they are consistent with the purposes of the Bank Holding Company Act and the Federal Reserve Act.

[46 FR 8437, Jan. 27, 1981]

PART 212—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

212.1 Authority, purpose, and scope.
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212.8 Enforcement.

AUTHORITY: 12 U.S.C. 3201 *et seq.*, 15 U.S.C. 19.

SOURCE: 45 FR 24389, Apr. 9, 1980, unless otherwise noted.

§ 212.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act ("Interlocks Act") (12 U.S.C. 3210 *et seq.*).

(b) *Purpose and scope.* The general purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official of a depository institution or depository holding company from also serving as a management official of another depository institution or depository holding company if the two organizations (1) are not affiliated and (2) are very large or are located in the same local area. This part applies to management officials of State member banks, bank holding companies, and their affiliates.

§ 212.2 Definitions.

For the purpose of this part, the following definitions apply:

(a) "Adjacent cities, towns, or villages" means cities, towns or villages whose borders are within ten road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is regarded as the boundary line of that city, town, or village for the purpose of this definition.

(b) "Affiliate" has the meaning given in section 202 of the Interlocks Act. For purposes of section 202, an individual's shares include shares of members of his or her immediate family. For the purpose of section 202(3)(B) of the Interlocks Act, an affiliate relationship based on common ownership does not exist if the appropriate Federal supervisory agency or agencies determine, after giving the affected persons the opportunity to respond, that the asserted affiliation appears to have been established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the agencies will consider, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate with that person's ownership of shares in the other organization. "Immediate family" includes spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(c) "Community" means city, town, or village, or contiguous or adjacent cities, towns, or villages.

(d) "Contiguous cities, towns, or villages" means cities, towns, or villages whose borders actually touch each other.

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tains a majority of its business in international activities. Each case will be scrutinized to ensure that the activities in the United States do not alter substantially the international orientation of the foreign company's business.

(e) "Depository holding company" means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act) having its principal office located in the United States.

(f) "Depository institution" means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered in the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a "depository institution."

(g) "Depository organization" means a depository institution or a depository holding company.

(h)(1) "Management official" means (i) an employee or officer with management functions (including a branch manager); (ii) a director (including an advisory director or honorary director); (iii) a trustee of a business organization under the control of trustees (*e.g.*, a mutual savings bank); or (iv) any person who has a representative or nominee serving in any such capacity.

(2) "Management official" does not include (i) a person whose management functions relate exclusively to the business of retail merchandising or manufacturing; (ii) a person whose managment functions relate principally to the business outside the United States of a foreign commercial bank; or (iii) persons described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)).

(i) "Office" means a principal or branch office, located in the United States, of a depository institution. "Office" does not include a representative office of a foreign commercial bank, an electronic terminal, a loan production office, or any office of a depository holding company.

(j) "Person" means a natural person, corporation, or other business.

(k) "Representative or nominee" means a person who serves as a management official and has an express or implied obligation to act on behalf of another person with respect to management responsibilities. Whether a person is a "representative or nominee" depends upon the facts in individual cases, and the appropriate Federal supervisory agency or agencies will determine, after giving the affected persons an opportunity to respond, whether a person is a "representative or nominee." Certain relationships, including family, employment, or agency relationships, or the ability and exercise of ability by a shareholder of a depository organization to elect a director may be evidence of such an express or implied obligation by the management official to another person. For the purposes of this definition, "person" shall include only natural persons.

(l) "Total assets" means assets measured on a consolidated basis as of the close of the organization's last fiscal year. The "total assets" of a depository holding company include the total assets of all of its subsidiary affiliates, except that "total assets" of a diversified savings and loan holding company, as defined in section 408(a)(1)(F) of the National Housing Act (12 U.S.C. 1730a(a)(F)), or of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)), means only the total assets of its depository institution affiliate. "Total assets" of a United States branch or agency of a foreign commercial bank means the total assets of such branch or agency itself exclusive of the assets of the other offices of the foreign commercial bank.

(m) "United States" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(n) "Relevant metropolitan statistical area" means a Primary Metropolitan Statistical Area, a Metropolitan Statistical Area, or a Consolidated Metropolitan Statistical Area that is not comprised of designated Primary Metropolitan Statistical Areas as defined by the Office of Management and Budget.

[45 FR 24389, Apr. 9, 1980, as amended at 48 FR 50303, Nov. 1, 1983; 49 FR 28043, July 10, 1984]

§ 212.3 General prohibitions.

(a) *Community.* A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:

(1) Both are depository institutions and each has an office in the same community;

(2) Offices of depository institution affiliates of both are located in the same community; or

(3) One is a depository institution that has an office in the same community as a depository institution affiliate of the other.

(b) *Metropolitan Statistical Area.* A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:

(1) Both are depository institutions, each has an office in the same relevant metropolitan statistical area, and either institution has total assets of $20 million or more;

(2) Offices of depository institution affiliates of both are located in the same relevant metropolitan statistical area and either of the depository institution affiliates has total assets of $20 million or more; or

(3) One is a depository institution that has an office in the same relevant metropolitan statistical area as a depository institution affiliate of the other and either the depository institution or the depository institution affiliate has total assets of $20 million or more.

(c) *Major Assets.* Without regard to location, a management official of a depository organization with total assets exceeding $1 billion or a management official of any affiliate of the greater than $1 billion depository organization may not serve at the same time as a management official of a nonaffiliated depository organization with total assets exceeding $500 million or a management official of any affiliate of the greater than $500 million depository organization.

[45 FR 24389, Apr. 9, 1980, as amended at 48 FR 50303, Nov. 1, 1983; 49 FR 28043, July 10, 1984]

§ 212.4 Permitted interlocking relationships.

(a) *Interlocking relationships permitted by statute.* The prohibitions of § 212.3 do not apply in the case of any one or more of the following organizations or their subsidiaries:

(1) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(2) A corporation operating under section 25 or 25(a) of the Federal Reserve Act ("Edge Corporations" and "Agreement Corporations");

(3) A depository organization that has been placed formally in liquidation, or that is in the hands of a receiver, conservator, or other official exercising a similar function;

(4) A credit union being served by a management official of another credit union;

(5) A State-chartered savings and loan guaranty corporation; or

(6) A Federal Home Loan Bank or any other bank organized solely for the purpose of serving depository institutions (commonly referred to as "bankers' banks") or solely for the purpose of providing securities clearing services and services related thereto for depository institutions, securities companies, or both.

(b) *Interlocking relationships permitted by agency order.* A management official or a prospective management official of a state member bank, bank holding company, or an affiliate of either, may enter into an otherwise prohibited interlocking relationship with a depository organization that falls within one of the classifications enumerated in this paragraph (b) if the Federal supervisory agency (as specified in section 207 of the Interlocks Act) of the organization that falls within one of the classifications determines that the relationship meets the requirements set forth in this paragraph. If the depository organization that falls within one of the classifications is not subject to the interlocks regulations of any of the Federal supervisory agencies, then the

Board shall determine whether the relationship meets the requirements of this paragraph.

(1) *Organization in low income area; minority or women's organization.* A person may serve at the same time as a management official of two or more depository organizations (or affiliates thereof) if one of the depository organizations is (i) located, or to be located, in a low income or other economically depressed area, or (ii) controlled or managed by persons who are members of minority groups or by women, subject to the following conditions:

(A) The relationship is necessary to provide management or operating expertise to the organization specified in paragraph (b)(1) (i) or (ii) of this section; (B) no interlocking relationship permitted by this paragraph shall continue for more than five years; and (C) other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

(2) *Newly-chartered organization.* A person may serve at the same time as a management official of two or more depository organizations if one of the depository organizations (or an affiliate thereof) is a newly-chartered organization, subject to the following conditions:

(i) The relationship is necessary to provide management or operating expertise to the newly-chartered organization; (ii) no interlocking relationship permitted by this paragraph shall continue for more than two years after the newly-chartered organization commences business; and (iii) other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

(3) *Conditions endangering safety or soundness.* A person may serve at the same time as a management official of two or more depository organizations (or affiliates thereof) if one of the depository organizations faces conditions endangering the organization's safety or soundness, subject to the following conditions:

(i) The relationship is necessary to provide management or operating expertise to such organization facing conditions endangering safety or soundness; and (ii) other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

(4) *Organization sponsoring credit union.* A management official of a depository organization or its affiliate may serve at the same time as a management official of a federally-insured credit union that is sponsored by the depository organization or its affiliate primarily to serve employees of the depository organization.

(5) *Loss of management officials due to changes in circumstances.* If a depository organization is likely to lose 30 percent or more of its directors or of its total management officials due to a change in circumstances described in § 212.6 of this part, the affected management officials may continue to serve in excess of the time periods specified in § 212.6, provided that:

(i) The depository organization's prospective loss of management officials or directors will be disruptive to the internal management of the depository organization; (ii) the depository organization demonstrates that, absent a grant of relief in accordance with this paragraph, 30 percent or more of either its directors or management officials are likely to sever their interlocking relationships with the depository organization; (iii) if the prospective losses of management officials resulted from more than one change in circumstances, such changes in circumstances must have occurred within a fifteen-month period; and (iv) the depository organization develops a plan for the orderly termination of service by each such management official over a period not longer than 30 months after the change in circumstances which caused the person's service to become prohibited (but if the loss of management officials is the result of more than one change in circumstances, the 30-month period is measured from the first change in circumstances). Other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate Federal supervisory agency. In evaluating requests made pursuant to this paragraph, the appropriate Federal supervisory agency will presume that a director who also is a paid, full-time employee of the depository organization, absent unusual circumstances, will not resign from the position of director with that depository organization. This presumption may, however, be rebutted by a showing that such unusual circumstances exist.

(c) *Diversified savings and loan holding company.* Notwithstanding § 212.3, a person who serves as a management official of a depository organization and of a nondepository organization (or any subsidiary thereof) is not prohibited from continuing the interlocking service when the nondepository organization becomes a diversified savings and loan holding company as that term is defined in section 408(a)(1)(F) of the National Housing Act (12 U.S.C. 1730a(a)(1)(F)), and may continue to serve until November 10, 1988, despite the occurrence of any subsequent changes in circumstances, whether or not those changes in circumstances occurred prior to November 30, 1983.

[45 FR 24389, Apr. 9, 1980, as amended at 48 FR 50304, Nov. 1, 1983]

§ 212.5 Grandfathered interlocking relationships.

A person whose interlocking service in a position as a management official of two or more depository organizations began prior to November 10, 1978, and was not immediately prior to that date in violation of section 8 of the Clayton Act (15 U.S.C. 19) is not prohibited from continuing to serve in such interlocking positions until November 10, 1988. Any management official who has been required to terminate or who has terminated service in one or more such interlocking positions as a result of a merger, acquisition, consolidation, or establishment of an office that formerly was defined as a change in circumstances in 12 CFR 212.6(a) (1981) is not prohibited from continuing or resuming such service until November 10, 1988.

[48 FR 5534, Feb. 7, 1983]

§ 212.6 Changes in circumstances.

(a) *Non-grandfathered interlocks.* If a person's service as a management official is not grandfathered under § 212.5 of this part, the person's service must be terminated if a change in circumstances causes such service to become prohibited. Such a change may include, but is not limited to, an increase in asset size of an organization due to natural growth, a change in relevant metropolitan statistical area or community boundaries or the designation of a new relevant metropolitan statistical area, an acquisition, merger, or consolidation, the establishment of an office, or a disaffiliation.

(b) *Grace period.* If a person's nongrandfathered service as a management official becomes prohibited under paragraph (a) of this section, the person may continue to serve as a management official of all organizations involved in the prohibited interlocking relationship until 15 months after the date on which the change in circumstances that caused the interlock to become prohibited occurred, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to establish a shorter period.

[48 FR 50304, Nov. 1, 1983, as amended at 49 FR 28043, July 10, 1984]

§ 212.7 Effect of Interlocks Act on Clayton Act.

The Board of Governors of the Federal Reserve System regards the provisions of the first three paragraphs of section 8 of the Clayton Act (15 U.S.C. 19) to have been supplanted by the revised and more comprehensive prohibitions on management official interlocks between depository organizations in the Interlocks Act.

§ 212.8 Enforcement.

The Board of Governors of the Federal Reserve System administers and enforces the Interlocks Act with respect to State member banks, bank holding companies, and their affiliates, and may refer the case of a prohibited interlocking relationship involving any such organization, regardless of the nature of any other organization involved in the prohibited relationship, to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a State member bank or bank holding company is primarily subject to the regulation of another Federal supervisory agency, then the Board does not administer and enforce the Interlocks Act with respect to that affiliate.

PART 213—CONSUMER LEASING

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SUPPLEMENT I-CL-1 OFFICIAL STAFF COMMENTARY TO REGULATION M

AUTHORITY: Sec. 105, Truth In Lending Act, as amended by sec. 605, Pub. L. 92-221, 94 Stat. 170 (15 U.S.C. 1604), unless otherwise noted.

SOURCE: Reg. M, 46 FR 20951, Apr. 7, 1981, unless otherwise noted.

§ 213.1 General provisions.

(a) *Authority.* This regulation, known as Regulation M, is issued by the Board of Governors of the Federal Reserve System to implement the consumer leasing portions of the Truth in Lending Act, which is Title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*).

(b) *Purpose.* The purpose of this regulation is to assure that lessees of personal property are given meaningful disclosures of lease terms, to delimit the ultimate liability of lessees in leasing personal property and to require meaningful and accurate disclosures of lease terms in advertising.

(c) *Enforcement and liability.* Section 108 of the Act contains the administrative enforcement provisions. Sections 112, 130, 131, and 185 of the Act contain the liability provisions for failing to comply with the requirements of the act and this regulation.

(d) *Issuance of staff interpretations.* (1) Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this regulation. Official staff interpretations provide the formal protection afforded under section 130(f) of the Act.

(2) A request for an official staff interpretation shall be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

(3) No staff interpretations will be issued approving lessor's forms, statements, calculation tools, or methods. This restriction does not apply to forms, statements, tools, or methods whose use is required or sanctioned by a government agency.

§ 213.2 Definitions and rules of construction.

(a) *Definitions.* For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply:

(1) *"Act"* means the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

(2) *"Advertisement"* means any commercial message in any newspaper, magazine, leaflet, flyer or catalog, on radio, television or public address system, in direct mail literature or other printed material on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag which is delivered or made available to a lessee or prospective lessee in any manner whatsoever.

(3) *"Agricultural purpose"* means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, of nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming.

"Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(4) *"Arrange for lease of personal property"* means to provide or offer to provide a lease which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such lease:

(i) Receives or will receive a fee, compensation, or other consideration for such service; or

(ii) Has knowledge of the lease terms and participates in the preparation of the contract documents required in connection with the lease.

(5) *"Board"* refers to the Board of Governors of the Federal Reserve System.

(6) *"Consumer lease"* means a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family or household purposes, for a period of time exceeding four months, for a total contractual obligation not exceeding $25,000, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. It does not include a lease which meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a) nor does it include a lease for agricultural, business or commercial purposes or one made to an organization.

(7) *"Lessee"* means a natural person who leases under, or who is offered a consumer lease.

(8) *"Lessor"* means a person who, in the ordinary course of business regularly leases, offers to lease, or arranges for the leasing of personal property under a consumer lease.

(9) *"Organization"* means a corporation, trust, estate, partnership, cooperative, association, government, or governmental subdivision, agency, or instrumentality.

(10) *"Period"* means a day, week, month, or other subdivision of a year.

(11) *"Person"* means a natural person or an organization.

(12) *"Personal property"* means any property which is not real property under the law of the state where it is located at the time it is offered or made available for lease.

(13) *"Real property"* means property which is real property under the law of the state in which it is located.

(14) *"Realized value"* means (i) the price received by the lessor for the leased property at disposition, (ii) the highest offer for disposition, or (iii) the fair market value at the end of the lease term.

(15) *"Security interest"* and *"security"* mean any interest in property which secures payment or performance of an obligation. The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialman's, artisan's, and other similar liens, vendor's liens in both real and personal property, any lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

(16) *"State"* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(17) *"Total lease obligation"* equals the total of (i) the scheduled periodic payments under the lease, (ii) any nonrefundable cash payment required of the lessee or agreed upon by the lessor and lessee or any trade-in allowance made at consummation, and (iii) the estimated value of the leased property at the end of the lease term.

(18) *"Value at consummation"* equals the cost to the lessor of the leased property including, if applicable, any increase or markup by the lessor prior to consummation.

(b) *Rules of construction.* For purposes of this regulation, the following rules of construction apply:

(1) Unless the context indicates otherwise, "lease" shall be construed to mean "consumer lease."

(2) A transaction shall be considered consummated at the time a contrac-

tual relationship is created between the lessor and lessee, irrespective of the time of the performance of either party.

(3) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the intent of any provisions may be drawn from them.

[46 FR 20951, Apr. 7, 1981; 46 FR 29245, June 1, 1981]

§ 213.3 Exempted transactions.

This regulation does not apply to lease transactions of personal property which are incident to the lease of real property and which provide that (a) the lessee has no liability for the value of the property at the end of the lease term except for abnormal wear and tear, and (b) the lessee has no option to purchase the leased property.

§ 213.4 Disclosures.

(a) *General requirements.* (1) Any lessor shall, in accordance with this regulation and to the extent applicable, make the disclosures required by paragraph (g) of this section with respect to any consumer lease. Such disclosures shall be made clearly, conspicuously, in meaningful sequence, and in accordance with the further requirements of this section. All numerical amounts and percentages shall be stated in figures and shall be printed in not less than the equivalent of 10-point type, .075 inch computer type, or elite size typewritten numerals, or shall be legibly handwritten.

(2) Disclosures shall be made prior to the consummation of the lease on a dated written statement which identifies the lessor and the lessee, and a copy of the statement shall be given to the lessee at the time. All of the disclosures shall be made together on either (i) the contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or (ii) a separate statement which identifies the lease transaction.

(3) In any lease of multiple items, the description required by paragraph (g)(1) of this section may be provided on a separate statement or statements which are incorporated by reference in the disclosure statement required by paragraph (a) of this section.

(4) All disclosures required to be given by this regulation shall be made in the English language except in the Commonwealth of Puerto Rico, where disclosures may be made in the Spanish language with English language disclosures provided upon the customer's request, either in substitution for the Spanish disclosures or as additional information in accordance with paragraph (b) of this section.

(b) *Additional information.* At the lessor's option, additional information or explanations may be supplied with any disclosure required by this regulation, but none shall be stated, utilized, or placed so as to mislead or confuse the lessee or contradict, obscure, or detract attention from the information required to be disclosed. Any lessor who elects to make disclosures specified in any provision of State law which, under § 213.7 of this regulation, is inconsistent with the requirements of the act and this regulation may—

(1) Make such inconsistent disclosures on a separate paper apart from the disclosures made pursuant to this regulation; or

(2) Make such inconsistent disclosures on the same statement on which disclosures required by this regulation are made, provided:

(i) All disclosures required by this regulation appear separately and above any other disclosures,

(ii) Disclosures required by this regulation are identified by a clear and conspicuous heading indicating that they are made in compliance with federal law, and

(iii) All inconsistent disclosures appear separately and below a conspicuous demarcation line, and are identified by a clear and conspicuous heading indicating that the statements made thereafter are inconsistent with the disclosure requirements of the federal Consumer Leasing Act.

(c) *Multiple lessors; multiple lessees.* When a transaction involves more than one lessor, only one lessor need make the disclosures required by this regulation, and the one that discloses shall be the one chosen by the lessors. When a lease involves more than one lessee, the disclosures may be made to any lessee who is primarily liable on the lease.

(d) *Unknown information estimate.* If, at the time disclosures must be made, an amount or other item of information required to be disclosed, or needed to determine a required disclosure, is unknown or not available to the lessor and the lessor has made a reasonable effort to ascertain it, the lessor may use an estimated amount or an approximation of the information, provided the estimate or approximation is clearly identified as such, is reasonable, is based on the best information available to the lessor, and is not used for the purpose of circumventing or evading the disclosure requirements of this regulation. Notwithstanding the requirement of this paragraph that the estimate be based on the best information available, a lessor is not precluded in a purchase option lease from understating the estimated value of the leased property at the end of the term in computing the total lease obligation as required in paragraph (g)(15)(i) of this section.

(e) *Effect of subsequent occurrence.* If information required to be disclosed in accordance with this regulation is subsequently rendered inaccurate as a result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this regulation.[1]

(f) *Leap year.* Any variance in any term required under this regulation to be disclosed, or stated in any advertisement, which occurs by reason of the addition of February 29 in each leap year, may be disregarded, and such term may be disclosed or stated without regard to such variance.

(g) *Specific disclosure requirements.* In any lease subject to this section, the following items, as applicable, shall be disclosed:

(1) A brief description of the leased property, sufficient to identify the property to the lessee and lessor.

(2) The total amount of any payment, such as a refundable security deposit paid by cash, check or similar means, advance payment, capitalized cost reduction or any trade-in allowance, appropriately identified, to be paid by the lessee at consummation of the lease.

(3) The number, amount, and due dates or periods of payments scheduled under the lease and the total amount of such periodic payments.

(4) The total amount paid or payable by the lessee during the lease term for official fees, registration, certificate of title, license fees, or taxes.

(5) The total amount of all other charges, individually itemized, payable by the lessee to the lessor, which are not included in the periodic payments. This total includes the amount of any liabilities the lease imposes upon the lessee at the end of the term, but excludes the potential difference between the estimated and realized values, required to be disclosed under paragraph (g)(13) of this section.

(6) A brief identification of insurance in connection with the lease including (i) if provided or paid for by the lessor, the types and amounts of coverages and cost to the lessee, or (ii) if not provided or paid for by the lessor, the types and amounts of coverages required of the lessee.

(7) A statement identifying any express warranties or guarantees available to the lessee made by the lessor or manufacturer with respect to the leased property.

(8) An identification of the party responsible for maintaining or servicing the leased property together with a brief description of the responsibility, and a statement of reasonable standards for wear and use, if the lessor sets such standards.

(9) A description of any security interest, other than a security deposit disclosed under paragraph (g)(2) of this section, held or to be retained by the lessor in connection with the lease

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[1] Such acts, occurrences, or agreements include the failure of the lessee to perform his obligations under the contract and such actions by the lessor as may be proper to protect his interests in such circumstances. Such failure may result in the liability of the lessee to pay delinquency charges, collection costs, or expenses of the lessor for perfection or acquisition of any security interest or amounts advanced by the lessor on behalf of the lessee in connection with insurance, repairs to, or preservation of leased property.

and a clear identification of the property to which the security interest relates.

(10) The amount or method of determining the amount of any penalty or other charge for delinquency, default, or late payments.

(11) A statement of whether or not the lessee has the option to purchase the leased property and, if at the end of the lease term, at what price, and, if prior to the end of the lease term, at what time, and the price or method of determining the price.

(12) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination.

(13) A statement that the lessee shall be liable for the difference between the estimated value of the property and its realized value at early termination or the end of the lease term, if such liability exists.

(14) Where the lessee's liability at early termination or at the end of the lease term is based on the estimated value of the leased property, a statement that the lessee may obtain at the end of the lease term or at early termination, at the lessee's expense, a professional appraisal of the value which could be realized at sale of the leased property by an independent third party agreed to by the lessee and the lessor, which appraisal shall be final and binding on the parties.

(15) Where the lessee's liability at the end of the lease term is based upon the estimated value of the leased property:

(i) The value of the property at consummation of the lease, the itemized total lease obligation at the end of the lease term, and the difference between them.

(ii) That there is a rebuttable presumption that the estimated value of the leased property at the end of the lease term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average payment allocable to a monthly period, and that the lessor cannot collect the amount of such excess liability unless the lessor brings a successful action in court in which the lessor pays the lessee's attorney's fees, and that this provision regarding the presumption and attorney's fees does not apply to the extent the excess of estimated value over realized value is due to unreasonable wear or use, or excessive use.

(iii) A statement that the requirements of paragraph (g)(15)(ii) of this section do not preclude the right of a willing lessee to make any mutually agreeable final adjustment regarding such excess liability.

(h) *Renegotiations or extensions.* If any existing lease is renegotiated or extended, such renegotiation or extension shall be considered a new lease subject to the disclosure requirements of this regulation, except that the requirements of this paragraph shall not apply to (1) a lease of multiple items where a new item(s) is provided or a previously leased item(s) is returned, and the average payment allocable to a monthly period is not changed by more than 25 per cent, or (2) a lease which is extended for not more than 6 months on a month-to-month basis or otherwise.

§ 213.5 Advertising.

(a) *General rule.* No advertisement to aid, promote, or assist directly or indirectly any consumer lease may state that a specific lease of any property at specific amounts or terms is available unless the lessor usually and customarily leases or will lease such property at those amounts or terms.

(b) *Catalogs and multi-page advertisements.* If a catalog or other multiple-page advertisement sets forth or gives information in sufficient detail to permit determination of the disclosures required by this section in a table or schedule of lease terms, such catalog or multiple-page advertisement shall be considered a single advertisement provided:

(1) The table or schedule and the disclosures made therein are set forth clearly and conspicuously; and

(2) Any statement of lease terms appearing in any place other than in that table or schedule of lease terms clearly and conspicuously refers to the page or pages on which that table or

schedule appears, unless that statement discloses all of the lease terms required to be stated under this section.

(c) *Terms that require additional information.* No advertisement to aid, promote, or assist directly or indirectly any consumer lease shall state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease unless the advertisement also states clearly and conspicuously each of the following items of information as applicable.

(1) That the transaction advertised is a lease.

(2) The total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required.

(3) The number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease.

(4) A statement of whether or not the lessee has the option to purchase the leased property and at what price and time. The method of determining the price may be substituted for disclosure of the price.

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term, if the lessee has such liability.

(d) *Multiple item leases; merchandise tags.* If a merchandise tag for an item normally included in a multiple item lease sets forth information which would require additional disclosures under paragraph (c) of this section, such merchandise tag need not contain such additional disclosures, provided it clearly and conspicuously refers to a sign or display which is prominently posted in the lessor's showroom. Such sign or display shall contain a table or schedule of those items of information to be disclosed under paragraph (c) of this section.

[46 FR 20951, Apr. 7, 1981; 46 FR 29245, June 1, 1981]

§ 213.6 Preservation and inspection of evidence of compliance.

(a) Evidence of compliance with the requirements imposed under this regulation, other than advertising requirements under § 213.5, shall be preserved by the lessor for a period of not less than 2 years after the date such disclosure is required to be made.

(b) Each lessor shall, when directed by the appropriate administrative enforcement authority designated in section 108 of the Act, permit that authority or its duly authorized representative to inspect its relevant records and evidence of compliance with this regulation.

§ 213.7 Inconsistent state requirements.

(a) *Preemption.* A State law which is similar in nature, purpose, scope, intent, effect, or requisites to a section of chapter 5 of the Act is not inconsistent with the Act or this regulation within the meaning of section 186(a) of the Act if the lessor can comply with the State law without violating this regulation. If a lessor cannot comply with a State law without violating a provision of this regulation which implements a section of chapter 5 of the Act, such State law is inconsistent with the requirements of the Act and this regulation within the meaning of section 186(a) of the Act and is preempted.

(b) *Procedures.* A state, through its governor, attorney general, or other appropriate official having primary enforcement or interpretative responsibilities for its consumer leasing law, may apply to the Board for a determination that the State law offers greater protection and benefit to lessees than a comparable provision(s) of chapter 5 of the Act and its implementing provision(s) in this regulation, or is otherwise not inconsistent with chapter 5 of the Act and this regulation, or for a determination with respect to any issues not clearly covered by paragraph (a) of this section as to the consistency or inconsistency of a State law with chapter 5 of the Act or its implementing provisions in this regulation.

§ 213.8 Exemption of certain state regulated transactions.

(a) *Exemption for State regulated transactions.* In accordance with the provisions of Appendix A to Regulation M, Part 213, any state may make application to the Board for exemption of any class of transactions within the state from the requirements of chapter 5 of the Act and the corresponding provisions of this regulation, provided that:

(1) The Board determines that under the law of that state, that class of transactions is subject to requirements substantially similar to those imposed under chapter 5 of the Act and the corresponding provisions of this regulation; or the lessee is afforded greater protection and benefit than is afforded under chapter 5 of the Act, and

(2) There is adequate provision for enforcement.

(b) *Procedures and criteria.* The procedures and criteria under which a state may apply for the determination provided for in paragraph (a) of this section are set forth in Appendix A to Regulation M.

(c) *Civil liability.* In order to assure that the concurrent jurisdiction of Federal and state courts created in sections 130(e) and 185(c) of the Act shall continue to have substantive provisions to which such jurisdiction shall apply, and generally to aid in implementing the Act with respect to any class of transactions exempted pursuant to paragraph (a) of this section and Appendix A, the Board pursuant to sections 105 and 186(b) of the Act hereby prescribes that:

(1) No such exemptions shall be deemed to extend to the civil liability provisions of sections 130, 131, and 185 of the Act; and

(2) After an exemption has been granted, the disclosure requirements of the applicable state law shall constitute the disclosure requirements of the Act, except to the extent that such state law imposes disclosure requirements not imposed by the Act. Information required under such state law with the exception of those provisions which impose disclosure requirements not imposed by the Act shall, accordingly, constitute a "requirement imposed" under chapter 5 of the Act for the purpose of section 130(a).

APPENDIX A—PROCEDURES AND CRITERIA FOR STATE EXEMPTIONS FROM THE CONSUMER LEASING ACT

(a) *Application.* Any state may make application to the Board, pursuant to the terms of this appendix and the Board's Rules of Procedure (12 CFR Part 262), for a determination that under the laws of the state,[1] "consumer lease" transactions as provided in section 181(1) of the Act and § 213.2 of this regulation, within that state are subject to requirements which are substantially similar to those imposed under chapter 5 of the Act[2] or which provide greater protection and benefit to lessees than those provided under chapter 5, and that there is adequate provision for enforcement of such requirements. Such application shall be made by letter addressed to the Board signed by the governor, the attorney general, or any official of the state having responsibilities under the state laws which are applicable to the relevant class of transactions.

(b) *Supporting documents.* The application shall be accompanied by:

(1) A copy of the full text of the laws of the state which are claimed by the applicant to impose requirements substantially similar to those imposed under chapter 5 or to provide greater protection and benefit to lessees than does chapter 5 with respect to "consumer lease" transactions as defined in § 213.2 of this regulation.

(2) A comparison of each requirement of state law with the corresponding requirement of chapter 5, together with reasons to support the claim that the requirements of state law are substantially similar to or provide greater protection and benefit to lessees than requirements of chapter 5 with respect to the class of consumer lease transactions. It shall also demonstrate that any differences are not inconsistent with and do not result in a diminution in the protection and benefit afforded lessees under chapter 5 and state that there are no other state laws which, due to their relations to the state law under consideration, should be consid-

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[1] Any reference to state law in this appendix includes a reference to any regulations which implement state law and formal interpretations thereof by a court of competent jurisdiction or a duly authorized agency of that state.

[2] Any reference in this appendix to chapter 5 of the Act or any section thereof includes a reference to the implementing provisions of this regulation and the Board's formal interpretations thereof.

ered by the Board in making its determination.

(3) A copy of the full text of the laws of the state which provide for enforcement of the state laws referred to in paragraph (b)(1) of this appendix.

(4) A comparison of the provisions of state law with the provisions of sections 108, 112, 130, 131, 183(a), 183(b), and 185 of the Act, together with reasons to support the claim that such state laws provide for

(i) Administrative enforcement of the state laws referred to in paragraph (b)(1) of this appendix which is equivalent to the enforcement provided under section 108 of the Act;

(ii) Criminal liability for willful and knowing violation of the state law with penalties substantially similar to those prescribed under section 112 of the Act, except that more severe penalties may be provided;

(iii) Civil liability for failure to comply with the requirements of the state law, including class action liability, which is substantially similar to that provided under sections 130, 131, 185(b) of the Act, except that more severe penalties may be provided;

(iv) In leases where the lessee's liability at the end of the lease term is based on the estimated value of the leased property, a limitation on the lessee's liability at the end of the lease term substantially similar to that provided by section 183(a) of the Act, except that a stricter limitation may be provided;

(v) A provision prescribing that all penalties and other charges for delinquency, default or early termination specified in the lease must be reasonable substantially similar to that provided in section 183(b) of the Act, except that a stricter provision may be provided; and

(vi) A statute of limitations that prescribes a period in which to institute civil actions of substantially similar duration as that provided under section 185(c) of the Act, except that a longer period may be provided.

(5) A statement identifying the office designated or to be designated to administer the state laws referred to in paragraph (b)(1) of this appendix, together with complete information regarding the fiscal arrangements for administrative enforcement (including the amount of funds available or to be provided), the number and qualifications of personnel engaged therein, and a description of the procedures under which such state laws are to be administratively enforced, including administrative enforcement with respect to federally-chartered lessors.[3] The foregoing statement should include reasons to support the claim that there is adequate provision for enforcement of such state laws.

(c) *Criteria for determination.* The Board will consider the following criteria along with any other relevant information in making a determination whether the laws of a state impose requirements substantially similar to or provide greater protection and benefit to lessees than under chapter 5, and whether there is adequate provision for enforcement of such laws:

(1) In order for provisions of state law to be substantially similar to or provide greater protection and benefit to lessees than the provision of chapter 5, the provisions of state law[4] shall require that

(i) Definitions and rules of construction import the same meaning and have the same application as those prescribed under § 213.2 of this regulation;

(ii) Lessors make all of the applicable disclosures required by this regulation and within the same (or more stringent) time periods as are prescribed by this regulation;

(iii) Lessors abide by obligations substantially similar to those prescribed by chapter 5, under conditions substantially similar to (or more stringent than) those prescribed in chapter 5;

(iv) Lessors abide by the same (or more stringent) prohibitions as are provided in chapter 5;

(v) Lessees need comply with no obligations or responsibilities which are more costly or burdensome as a condition of exercising any of the rights or gaining the benefits and protections in the state law which correspond to those afforded by chapter 5, than those obligations or responsibilities imposed upon lessees in chapter 5; and

(vi) Substantially similar or more favorable rights and protections are provided to lessees under conditions substantially similar to or more favorable (to lessees) than those afforded by chapter 5.

(2) In determining whether the provisions for enforcement of the state law referred to in paragraph (b)(1) of this appendix are

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[3] Transactions within a state in which a federally-chartered institution is a lessor shall not be subject to the exemption, and such federally-chartered lessors shall remain subject to the requirements of the act and administative enforcement by the appropriate federal authority under section 108 of the Act, unless it is established to the satisfaction of the Board that appropriate arrangements have been made with such federal authorities to assure effective enforcement of the requirements of state laws with respect to such lessors.

[4] This paragraph is not to be construed as indicating that the Board will consider adversely any additional requirements of state law which are not inconsistent with the purpose of the act or the requirements imposed under chapter 5.

adequate, consideration will be given to the extent to which, under the laws of the state, provision is made for

(i) Administrative enforcement, including necessary facilities, personnel and funding;

(ii) Criminal liability for willful and knowing violation with penalties substantially similar to those prescribed under section 112 of the Act, except that more severe criminal penalties may be prescribed;

(iii) Civil liability for failure to comply with the provisions of the state law substantially similar to that provided under sections 130, 131 and 185(b) of the Act, except that more severe civil liability penalties may be prescribed;

(iv) In leases where the lessee's liability at the end of the lease term is based on the estimated value of the leased property, a limitation on the lessee's liability at the end of the lease term substantially similar to that provided in section 183(a) of the Act, and a provison requiring that penalties be reasonable substantially similar to that provided in section 183(b) of the Act, except that stricter standards on end-term liability and penalty provisions may be prescribed; and

(v) A statute of limitations with respect to civil liability of substantially similar duration to that provided under section 185(c) of the Act, except that a longer duration may be provided.

(d) *Public notice of filing and proposed rulemaking.* Following initial review of an application filed in accordance with the requirements of paragraphs (a) and (b) of this appendix, notice of such filing and proposed rulemaking will be published by the Board in the FEDERAL REGISTER, and a copy of such application will be made available for examination by interested persons during business hours at the Board and at the Federal Reserve Bank of each Federal Reserve District in which any part of the state of the applicant is situated. A reasonable period of time will be allowed from the date of such publication for the Board to receive written comments from interested persons with respect to that application.

(e) *Exemption from requirements of chapter 5.* If the Board determines that under the law of a state consumer lease transactions are subject to requirements which are substantially similar to or which provide greater protection and benefit to lessees than those imposed under chapter 5 and that there is adequate provision for enforcement, the Board will exempt such class of transactions in that state from the requirements of chapter 5 in the following manner and subject to the following conditions:

(1) Notice of the exemption will be published in the FEDERAL REGISTER, and the Board will furnish a copy of such notice to the official who made application for such exemption and to each federal authority responsible for administrative enforcement of the requirements of chapter 5.

(2) The appropriate official of any state which receives an exemption shall inform the Board within 30 days of the occurrence of any change in its related law (including regulations). The report of any such change shall contain the full text of that change together with statements setting forth the information and opinions with respect to that change as specified in paragraphs (b) (2) and (4) of this appendix. The official who has received an exemption shall file with the Board from time to time such reports as the Board may require.

(3) The Board will inform the official of any subsequent amendments to chapter 5 (including the implementing provisions of this regulation and the Board's formal interpretations) which might call for amendment of state law, regulations or formal interpretations thereof.

(f) *Adverse determination.* (1) If the Board denies the application for exemption, it will notify the appropriate state official of the facts upon which its decision is based and shall afford that state a reasonable opportunity to demonstrate or achieve compliance.

(2) If, after giving the state an opportunity to demonstrate or achieve compliance, the Board finds that it still cannot grant the exemption, the Board will publish in the FEDERAL REGISTER a notice of its decision and will furnish a copy of such notice to the official who made application for such exemption.

(g) *Revocation of exemption.* (1) The Board reserves the right to revoke any exemption if at anytime it determines that the state law does not, in fact, impose requirements which are substantially similar to or provide greater protection and benefit to lessees than those imposed under chapter 5, or that there is not, in fact, adequate provision for enforcement.

(2) Before revoking any state exemption, the Board will notify the appropriate state official of the facts or conduct which in the opinion of the Board warrants such revocation and shall afford that state such opportunity as the Board deems appropriate to demonstrate or achieve compliance.

(3) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Board determines that the state has not done so, notice of the Board's intention to revoke such exemption shall be published as a notice of proposed rulemaking in the FEDERAL REGISTER. A period of time will be allowed from the date of such publication for the Board to receive written comments from interested persons.

(4) In the event of revocation of such exemption, notice of such revocation shall be published by the Board in the FEDERAL REG-

ISTER, and a copy of such notice shall also be furnished to the appropriate state official and to the federal authorities responsible for enforcement of requirements of chapter 5, and the class of transactions affected within that state shall then be subject to the requirements of chapter 5, to administrative enforcement as provided under section 108, to criminal liability as provided under section 112, and to civil liability as provided under sections 130, 131, and 185(b) of the Act.

[46 FR 20951, Apr. 7, 1981; 46 FR 29245, June 1, 1981]

APPENDIX B—PROCEDURES AND CRITERIA FOR BOARD DETERMINATION REGARDING PREEMPTION

Procedures and criteria under which any state may apply for a determination that a state law[1] is not inconsistent with and not preempted by a provision of chapter 5 of the Act[2] pursuant to § 213.7 of this regulation.

(a) *Application.* Any state may make application to the Board pursuant to the terms of this appendix and the Board's Rules of Procedure (12 CFR Part 262), for a determination that a law of such state is consistent[3] with a provision of chapter 5 of the Act, because such state law provides greater protection and benefit to lessees than does the provision of chapter 5, that such law is consistent with a provision of chapter 5 for any other reason, or for a determination of any issues not clearly covered by § 213.7 of this regulation with regard to the relationship of the federal law to the state law. Such application shall be made by letter addressed to the Board signed by the governor, attorney general or any official of the state having responsibilities under the state law.

(b) *Supporting documents.* The application shall be accompanied by:

(1) A copy of the full text of the laws of the state which are claimed by the applicant to be consistent with a provision of chapter 5 or whose relationship (with regard to consistency or inconsistency) to a provision of chapter 5 is claimed by the applicant to be not clearly covered by the standards and criteria for comparison set forth in § 213.7 of this regulation.

(2) A comparison of each requirement of the state law with the corresponding requirement of chapter 5, with reasons to support the claim that the state law is consistent with a provision of chapter 5 or that the relationship (with regard to consistency or inconsistency) between the state law and chapter 5 is not clearly covered by the standards and criteria set forth in § 213.7 of this regulation.

(3) A copy of the full text of any provisions of state law corresponding to sections 112, 130, 131, 183(a), 183(b), 185(b), and 185(c) of the Act (if applicable), together with reasons for the applicant's claim that such state provisions are not inconsistent (because they provide greater protection and benefit to lessees or for other reasons) with the act.

(4) A statement that there are not state laws (including administrative or judicial interpretations) other than those submitted to the Board which have any bearing on whether or not the state law is consistent with a provision of chapter 5.

(5) A statement identifying the office designated or to be designated to administer the state laws referred to in paragraph (b)(1) of this appendix. If no such administrative office exists, then a statement identifying the office to which the Board can address any correspondence regarding the request for such determination shall accompany the application.

(c) *Criteria for determination.* The Board will consider the following criteria along with any other relevant information, in addition to the criteria set forth in § 213.7 of this regulation, in making a determination of whether or not state law is inconsistent with a provision of chapter 5. In order for provisions of state law to be determined to be consistent with a provision of chapter 5, the provisions of state law[4] shall, to the extent relevant to the determination, require that

(1) Definitions and rules of construction import the same meaning and have the same application as those prescribed by this regulation;

(2) Lessors make all of the applicable disclosures required by the corresponding pro-

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[1] Any reference to state law in this appendix includes a reference to any regulations which implement state law and formal interpretations thereof by a court of competent jurisdiction or a duly authorized agency of that state.

[2] Any reference in this appendix to chapter 5 of the Act or any section thereof includes a reference to the implementing provisions of this regulation and the Board's formal interpretations thereof.

[3] For purposes of this appendix, the terms "consistent" and "not inconsistent" shall convey the same meaning and shall involve the same evidentiary showing.

[4] This paragraph is not to be construed as indicating that the Board would consider adversely any additional requirements of state law which are not inconsistent with the purposes of the Act or the requirements imposed under chapter 5.

vision of chapter 5 and this regulation, and within the same (or more stringent) time periods as those prescribed by this regulation;

(3) Lessors abide by obligations substantially similar to those prescribed by a provision of chapter 5 under conditions substantially similar (or more stringent) to those in chapter 5;

(4) Lessors abide by the same (or more stringent) prohibitions as are provided by chapter 5;

(5) Lessees need comply with no obligations or responsibilities which are more costly or burdensome as a condition of exercising any of the rights or gaining the benefits and protections provided in the state law, which correspond to those afforded by chapter 5, than those obligations or responsibilities imposed on lessees in chapter 5; and

(6) Lessees are to have rights and protections substantially similar to or more favorable than those provided by the corresponding provisions of chapter 5 under conditions and within time periods which are substantially similar to or more favorable (to lessees) than those prescribed by chapter 5.[illegible]

(d) *Public notice of filing and proposed rulemaking.* In connection with any application which has been filed in accordance with the requirements of paragraphs (a) and (b) of this appendix, notice of such filing and proposed rulemaking will be be published by the Board in the FEDERAL REGISTER, and a copy of such application will be made available for examination by interested persons during business hours at the Board and at the Federal Reserve Bank of each Federal Reserve District in which any part of the state of the applicant is situated. A period of time will be allowed from the date of such publication for the Board to receive written comments from interested persons with respect to the application.

(e) *Determination that a state law is consistent with chapter 5.* If the Board determines on the basis of the information before it that the law of a state is consistent with a provision of chapter 5, notice of such determination shall be published in the following manner and shall be subject to the following conditions:

(1) Notice of the determination will be published in the FEDERAL REGISTER, and the Board will furnish a copy of such notice to the official who made application for such exemption and to each federal authority responsible for administrative enforcement of the requirements of chapter 5.

(2) The appropriate official of any state which receives such a determination shall inform the Board within 30 days of the occurrence of any change in its related law (or regulations). The report of any such change shall contain copies of the full text of the law, as changed, together with statements setting forth the information and opinions with respect to that change as specified in paragraphs (b) (2) and (4) of this appendix. The appropriate official of any state which has received such a determination shall file with the Board from time to time such reports as the Board may require.

(3) The Board will inform the appropriate official of any state which receives such a determination of any subsequent amendments to chapter 5 (including the implementing provisions of this regulation and the Board's formal interpretations) which might call for amendment of state law, regulations, or formal interpretations.

(f) *Adverse determination.* (1) If, after publication of notice in the FEDERAL REGISTER as provided under paragraph (d) of this appendix, the Board finds that such state law is inconsistent with a provision of chapter 5, it will notify the appropriate state official of the facts upon which such finding is based and shall afford that state official a reasonable opportunity to demonstrate further that such state law is not inconsistent with the corresponding provisions of chapter 5, if such state official desires to do so.

(2) If, after having afforded the state official such further opportunity to demonstrate that the state law is consistent with a provision of chapter 5, the Board finds that the state law is inconsistent, it will publish in the FEDERAL REGISTER a notice of its decision with respect to such application and will furnish a copy of such notice to the official who made application for the determination.

(g) *Reversal of determination.* (1) The Board reserves the right to reverse any determination made under this appendix to the effect that a state law is consistent with a provision of chapter 5 because of subsequently discovered facts, a change in the state or federal law (by amendment or administrative or judicial interpretation or otherwise) or for any other reason bearing on the coverage or impact of the state or federal law.

(2) Before reversing any such determination, the Board will notify the appropriate state official of the facts or conduct which, in the opinion of the Board, warrants such reversal and shall afford that state such opportunity as the Board deems appropriate

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[illegible] A state may make a showing that in certain limited readily identifiable circumstances a law which may otherwise be inconsistent with a provision of chapter 5 is not inconsistent under the criteria set forth in paragraph (c) of this appendix. The Board may determine such state law to be consistent only under those circumstances but will make no such determination if doing so would mislead or confuse lessees.

under the circumstances to demonstrate that the determination should not be reversed.

(3) If, after having been afforded the opportunity to demonstrate that its law is consistent with a provision of chapter 5, the Board determines that the state has not done so, notice of the Board's intention to reverse such determination shall be published as a notice of proposed rulemaking in the FEDERAL REGISTER. A reasonable period of time will be allowed from the date of such publication for the Board to receive written comments from interested persons.

(4) In the event of reversal of such determination, notice shall be published by the Board in the FEDERAL REGISTER, and a copy of such notice shall also be furnished to the appropriate state official and to the Federal authorities responsible for enforcement of the requirements of chapter 5, and the state law affected shall then be considered inconsistent with and preempted by chapter 5 within the meaning of section 186(a) of the Act.

[46 FR 20951, Apr. 7, 1981; 46 FR 29245-29246, June 1, 1981]

APPENDIX C—MODEL FORMS

C-1 Model open-end or finance vehicle lease disclosures.

C-2 Model closed end or net vehicle lease disclosures.

C-3 Model furniture lease disclosures.

C-1—Model Open-End or Finance Vehicle Lease Disclosures

Date ________________

These disclosures are provided pursuant to the Federal Consumer Leasing Act.

1. LESSOR(S) ________________ LESSEE(S) ________________

2. Description of leased property

Year	Make	Model	Body Style	Vehicle ID #

3. (a) Initial Charges, consisting of
☐ Capitalized Cost Reduction ☐ Trade-in Allowance ☐ ________________ $ ________

(b) Other Charges Payable at Inception, consisting of
☐ Advance Monthly Payment of ________
☐ Refundable Security Deposit ☐ Delivery Charge
☐ Registration Fees ☐ ________________ $ ________

Total Payment Due at Inception: $ ________

4. (a) Basic Monthly Payment: $ ________

(b) Other Charges Payable Monthly:
☐ Maintenance ☐ Registration Fees
☐ Insurance ☐ ________________ $ ________

Total Monthly Payment: $ ________

5. Term of this lease: ________
The first monthly payment of $ ________ is due on ________; ________ subsequent payments of $ ________ on the ______ of each month thereafter.

6. Total of Basic Monthly Payments: $ ________

7. Total of Other Charges Payable to Lessor:
☐ Disposition $ ________ ☐ Maintenance $ ________
☐ ________________ $ ________ $ ________

8. Fees and Taxes
Total amount you will pay during the term for official fees, registration, certificate of title, license fees and taxes. $ ________

9. Insurance
The following types and amounts of insurance will be acquired in connection with this lease: ________________
☐ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ ________
☐ You (lessee) agree to provide insurance coverage in the amounts and types indicated above. $ ________

10. Estimated ________ value of the vehicle at the end of the lease term:
(Your liability for this sum may be limited. See Item 14.) $ ________

11. Total Lease Obligation:
(Items 3(a), 6 and 10.) $ ________

12. Initial Value of Vehicle: $ ________

13. Difference:
(Item 11 less Item 12.) $ ________

14. End of Term Liability

(a) The estimated value of the vehicle stated in Item 10 is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is *greater* than the estimated value, you will have no further liability under this lease, except for other charges already incurred [and are entitled to a credit or refund of any surplus].

If the actual value of the vehicle is *less* than the estimated value, you will be liable for any difference up to $ ________ (3 times Item 4(a)). For any difference in excess of that amount, you will be liable only if

1. Excessive use or damage [as described in Item 15] [representing more than normal wear and tear] resulted in an unusually low value at the end of the term.
2. You voluntarily agree with us after the end of the lease term to make a higher payment.
3. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment.

Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual value was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle.

Unless we prove that the excess amount owed was the result of excessive use or unreasonable wear and tear, we will pay your reasonable attorney's fees.

(b) If you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the ________ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Appendix C

15. Standards for Wear and Use
The following standards are applicable for determining unreasonable or excessive wear and use of the leased vehicle: ______
______
______
______.

16. Maintenance
[You are responsible for the following maintenance and servicing of the leased vehicle: ______
______
______.]
[We are responsible for the following maintenance and servicing of the leased vehicle: ______
______
______.]

17. Warranties
The leased vehicle is subject to the following express warranties: ______
______
______.

18. Early Termination and Default
(a) You may terminate this lease before the end of the lease term under the following conditions: ______
______.
The charge for such early termination is ______
______.
(b) We may terminate this lease before the end of the lease term under the following conditions: ______
______
______.
Upon such termination we shall be entitled to the following charge(s) for ______
______
______.
(c) To the extent these charges take into account the value of the vehicle at the end of the lease term, you have the same right to a professional appraisal as that stated in Item 14(b).

19. Security Interest
We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: ______
______
______.

20. Late Payments
The charge for late payments is ______
______.

21. Option to Purchase
[You have an option to purchase the leased vehicle at the following times: ______
______.
If at the end of the term, the price will be $______.
If prior to the end of the term, the price will be $ ______
______.]
[You have no option to purchase the leased vehicle.]

Appendix C

Instructions for Completion of Model Open-End or Finance Vehicle Lease Disclosures

GENERAL INSTRUCTIONS

Completion of this form may be facilitated by reference to the following instructions. Any question as to the permissibility or accuracy of a specific disclosure may be answered by reference to Regulation M, 12 CFR Part 213.

Information which is required to be disclosed may be estimated if the information is unknown or unavailable, provided that the information is clearly identified as an estimate and the estimate is based on the best information available and is reasonable.

Any inapplicable disclosures should be deleted. This form is based on a monthly periodic payment. Any lessor whose lease contemplates a different payment period should change the form where it refers to "monthly" amounts to read "weekly" or other time period, as appropriate.

All numerical amounts must be stated in figures and shall be printed in not less than the equivalent of ten point type or elite typewritten numerals or legibly handwritten. Paragraph numbers need not be printed in ten point type or its equivalent.

SPECIFIC INSTRUCTIONS

Item 1. The disclosures must be made on a written dated statement. All lessors and lessees must be identified by name. If, for example, one person arranges the lease and another person enters into the lease, both must be identified as lessors. An address may augment the identification but need not be supplied as part of the disclosure form.

Item 2. This disclosure provides a brief description of the leased property. Lessors may include a more detailed description including, for example, special accessories. There is no requirement that a vehicle identification number for the vehicle be disclosed.

Item 3. This disclosure shows the total amount of any initial payment the customer must make when the lease is entered into. The components of the initial payment must be identified and may, at the lessor's option, be itemized with respect to dollar amount.

This item is divided into two distinct parts. The items identified in 3(a) are those which are included in the calculation of the "Total Lease Obligation." Those which appear in 3(b) are not included in the "Total Lease Obligation." For convenient reference and to provide the customer with the total amount due at the inception of the lease, subtotals for 3(a) and 3(b) are provided as well as a combined total of 3(a) and 3(b) (shown as "Total Payment Due at Inception").

The term "Capitalized Cost Reduction" is used to indicate payment in the nature of a downpayment which reduces the value of the leased vehicle to be amortized over the term of the lease.

The "Advance Monthly Payment" is the total of all amounts collected at the inception of the lease which are to be attributed to a monthly payment(s). For example, if the first month's rental payment is collected at the inception, the form might read "Advance Monthly Payment of the first month's rent" or a similar phrase. If the last month's payment, or any other payment in the nature of rental for a portion of the term, is collected at the inception, appropriate language should be provided to describe the components of the "Advance Monthly Payment."

Checklists are provided for both 3(a) and 3(b) to aid in identifying their components. Blank spaces and check boxes are provided to identify any other elements which are to be included in these items.

Item 4. This item discloses the payment the lessee must make each payment period. This item is divided into two parts. The terms in 4(a) are those portions of each payment which are included in the computation of the "Total Lease Obligation." This item includes sales/use taxes paid on the periodic (monthly) payment. The terms in 4(b) are not included in the "Total Lease Obligation." For convenient reference and to provide the customer with the total amount of each payment, subtotals are provided for 4(a) and 4(b) as well as the combined total of 4(a) and 4(b) (shown as the "Total Monthly Payment"). The components of 4(a) and 4(b) may be itemized as to dollar amount.

Item 5. This item discloses the term of the lease, the date of the first periodic payment and the dates or periods of all subsequent periodic payments. The blank spaces should be filled in with the appropriate terms. For example, after the phrase "Term of this lease:" the lessor may place the words "24 months" or "April 2, 1977, through April 2, 1979," as appropriate. In the blank spaces provided after the phrase "The first monthly payment of:" should be the appropriate amount and date. The first monthly payment may be part or all of the "Advance Monthly Payment" disclosed under 3(b). The phrase "subsequent payments of" should be preceded by the appropriate number of payments and followed with the appropriate terms, such as "$100.00 on the 2d of each month thereafter."

Item 6. This item discloses the total of the basic monthly payments payable over the term of the lease. This figure is computed by multiplying the basic monthly payment from Item 4(a) by the number of subsequent payments in Item 5 and adding to the product the basic portion of the first monthly payment. This figure will be used in computing the "Total Lease Obligation."

Item 7. This item discloses the total of other charges payable to the lessor. This excludes charges for official fees, taxes, insurance and charges disclosed as totals under other items. The individual components must be identified and itemized as to amount. A blank check box is provided in order to add to the list, as necessary.

Item 8. This item discloses the total amount to be paid by the lessee during the lease term for taxes and other official fees.

Item 9. This item requires disclosure of the types and amounts of insurance coverage, with their total premium cost, if the insurance is provided by the lessor. In the alternative, only the types and amounts of coverage required of the lessee must be disclosed if the lessee provides the insurance coverage. The disclosure is to be completed by identifying the types and amounts of insurance coverage following the colon at the end of the first sentence. If the lessor is to provide the coverage the top check box should be filled in and the total premium cost indicated in the blank space provided. Otherwise the bottom check box should be filled in.

Item 10. This item provides for disclosure of the estimated value of the leased vehicle at the end of the term, an element of the "Total Lease Obligation." A blank space is provided in which to indicate whether the value shown is, for example, "retail" or "wholesale" value.

Items 11, 12 and 13. These items provide for disclosure of the difference between the "Total Lease Obligation" and the vehicle's value at the inception of the lease. The definition of "Total Lease Obligation" is the sum of any initial charges (Item 3(a)), the total of basic monthly payments (Item 6) and the estimated value of the property at the end of the term (Item 10). The "Total Lease Obligation" does not include items such as refundable security deposits and insurance premiums.

Item 14. This item provides disclosures with respect to the lessee's liability at the end of the lease term. The bracketed phrase in the second sentence is appropriate only where the lessee will be given any surplus resulting from the disposition. The lessor may, in Item 14(a) 1, reference the standards set forth in Item 15, if the lessor set such standards. If the lessor does not set standards for wear and use, the second bracketed phrase should be used. Item 14(b) discloses the lessee's right to an independent appraisal. The blank space in Item 14(b) is provided to indicate whether the value of the appraisal should be, for example, "wholesale" or "retail." This item should be consistent with the type of value used in Item 10.

Item 15. This item discloses reasonable standards for wear and use established by the lessor. The lessor is permitted but not required to set such standards. Therefore, the disclosure may be omitted by lessors who do not set standards for wear and use.

Item 16. This item provides for disclosure of the maintenance and servicing responsibilities of the parties. These responsibilities may be allocated either to the lessor or to the lessee, or may be divided between them.

Item 17. This item discloses all express warranties on the leased property made by the manufacturer or lessor and available to the lessee. A brief identification of the warranty must be supplied. A reference to the standard manufacturer's warranty, for example, would suffice.

Item 18. This item discloses the conditions under which the lessee may terminate the lease prior to the end of the lease term. It also discloses the amount or method of determining the amount of the charge which the lessee must pay for early termination. This item should disclose the conditions under which the lessor may terminate the lease prior to the end of the term, such as default. This item should also be used to disclose the amount or method of determining the amount of any default charges. The charges or method of determining the charges for early termination by the lessor other than for lessee's default should be separately specified in this item.

Item 19. This disclosure of the security taken must include, in the space provided, a brief identification of the types of security interests and an identification of the property covered by each.

Item 20. This disclosure indicates the amount or method of determining the amount of any charges for late payment.

Item 21. This item provides alternative disclosures covering the several options a lessor may offer to a lessee to purchase the leased property. A lessor should use the disclosures applicable to the lease plan used. For example, if no option to purchase is offered, only the last sentance of the item should be used. If the lessor offers an option to purchase, the times at which it may be exercised must be supplied. The price must be disclosed for an option exercised at the end of the term and the price or method of computing the price for an option exercised during the lease term must be supplied.

C-2—Model Closed-End or Net Vehicle Lease Disclosures

Date ______________

These disclosures are provided pursuant to the Federal Consumer Leasing Act.

1. LESSOR(S) ______________________ LESSEE(S) ______________________

2. Description of leased property

Year	Make	Model	Body Style	Vehicle ID #

3. Total Payment Due at Inception:

☐ Capitalized Cost Reduction ☐ Delivery Charge

☐ Trade-in Allowance ☐ Registration Fees

☐ Advance Monthly Payment of ______________

☐ Refundable Security Deposit ☐ ______________ $______________

4. Term of this lease:

The first monthly payment of $__________ is due on ______________; ________ subsequent payments of $__________ on the __________ of each month thereafter.

5. Total Monthly Payment: $______________

6. Total of Monthly Payments: $______________

7. Total of Other Charges Payable to Lessor:

☐ Disposition $__________ ☐ Maintenance $__________

☐ ______________________ $__________ $______________

8. Fees and Taxes

Total amount you will pay during the term for official fees, registration, certificate of title, license fees and taxes. $______________

9. Insurance

The following types and amounts of insurance will be acquired in connection with this lease:

____

☐ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $__________.

☐ You (lessee) agree to provide insurance coverage in the amounts and types indicated above. $______________

10. Standards for Wear and Use

The following standards are applicable for determining unreasonable or excessive wear and use of the leased vehicle: ______________

____

____

____

11. Maintenance

[You are responsible for the following maintenance and servicing of the leased vehicle: ______________

____

____.]

[We are responsible for the following maintenance and servicing of the leased vehicle: ______________

____

____.]

12. **Warranties**

The leased vehicle is subject to the following express warranties: ______________________________

____

____.

13. **Early Termination and Default**

(a) You may terminate this lease before the end of the lease term under the following conditions: ______________

____

____.

The charge for such early termination is ______________________________________

____

____.

(b) We may terminate this lease before the end of the lease term under the following conditions: ______________

____

____

____.

Upon such termination we shall be entitled to the following charge(s) for ______________________________

____

____

____.

(c) To the extent that these charges take into account the value of the vehicle at the end of the lease term, if you disagree with the value we assign to the vehicle, you may obtain at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the ______________ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

14. **Security Interest**

We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: ____

____

____.

15. **Late Payments**

The charge for late payments is ____

____.

16. **Lessee's Option to Purchase**

[You have an option to purchase the leased vehicle at the following times: ______________________________

____.

If at the end of the term, the price will be $______________.

If prior to the end of the term, the price will be $ ______________________________________

____.]

[You have no option to purchase the leased vehicle.]

Appendix C

Instructions for Completion of Model Closed-End or Net Vehicle Lease Disclosures

GENERAL INSTRUCTIONS

Completion of this form may be facilitated by reference to the following instructions. Any question as to the permissibility or accuracy of a specific disclosure may be answered by reference to Regulation M, 12 CFR Part 213.

Information which is required to be disclosed may be estimated if the information is unknown or unavailable, provided that the information is clearly identified as an estimate and the estimate is based on the best information available and is reasonable.

Any inapplicable disclosures should be deleted. This form is based on a monthly periodic payment. Any lessor whose lease contemplates a different payment period should change the form where it refers to "monthly" amounts to read "weekly" or other time period, as appropriate. All numerical amounts must be stated in figures and shall be printed in not less than the equivalent of ten point type or elite typewritten numerals or legibly handwritten. Paragraph numbers need not be printed in ten point type or its equivalent.

SPECIFIC INSTRUCTIONS

Item 1. The disclosures must be made on a written dated statement. All lessors and lessees must be identified by name. If, for example, one person arranges the lease and another person enters into the lease, both must be identified as lessors. An address may augment the identification but need not be supplied as part of the disclosure form.

Item 2. This disclosure provides a brief description of the leased property. Lessors may include a more detailed description including, for example, special accessories. There is no requirement that a vehicle identification number for the vehicle be disclosed.

Item 3. This disclosure shows the total amount of any initial payment the customer must make when the lease is entered into. The components of the initial payment *must* be identified and *may*, at the lessor's option, be itemized with respect to dollar amount.

The term "Capitalized Cost Reduction" is used to indicate a payment in the nature of a downpayment which reduces the value of the leased vehicle to be amortized over the term of the lease.

The "Advance Monthly Payment" is the total of all amounts collected at the inception of the lease which are to be attributed to a monthly payment(s). For example, if the first month's rental payment is collected at the inception, the form might read "Advance Monthly Payment of the first month's rent" or a similar phrase. If the last month's payment, or any other payment in the nature of rental for a portion of the term, is collected at the inception, appropriate language should be provided to describe the components of the "Advance Monthly Payment."

Checklists are provided to aid in identifying the components.

Blank spaces and check boxes are provided to identify any other elements which are to be included in this item.

Item 4. This item discloses the term of the lease, the date of the first periodic payment and the dates or periods of all subsequent periodic payments. The blank spaces should be filled in with the appropriate terms. For example, after the phrase "Term of this lease:" the lessor may place the words "24 months" or "April 2, 1977, through April 2, 1979," as appropriate. In the blank spaces provided after the phrase "The first monthly payment of:" should be the appropriate amount and date. The first monthly payment may be part or all of the "Advance Monthly Payment" disclosed under Item 3. The phrase "subsequent payments of" should be preceded by the appropriate number of payments and followed with the appropriate terms, such as "$100.00 on the 2d of each month thereafter."

Item 5. This item discloses the payment the lessee must make each payment period. The component parts of the "Total Monthly Payment" may but need not be identified and itemized as to amount.

Item 6. This item discloses the total of the monthly payments payable over the term of the lease. This figure is computed by multiplying the monthly payment from Item 5 by the number of subsequent payments in Item 4 and adding the first monthly payment to the product.

Item 7. This item discloses the total of other charges payable to the lessor. This excludes charges for official fees, taxes, insurance and charges disclosed as totals under other items. The individual components must be identified and itemized as to amount. A blank check box is provided in order to add to the list, as necessary.

Item 8. This item discloses the total amount to be paid by the lessee during the lease term for taxes and other official fees.

Item 9. This item requires disclosure of the types and amounts of insurance coverage, with their total premium cost, if the insurance is provided by the lessor. In the alternative, only the types and amounts of coverage required of the lessee must be disclosed if the lessee provides the insurance coverage. The disclosure is to be completed by identifying the types and amounts of insurance coverage following the colon at the end of the first sentence. If the lessor is to provide the coverage the top check box should be filled in and the total premium cost indicated in the blank space provided. Otherwise the bottom check box should be filled in.

Item 10. This item discloses reasonable standards for wear and use established by the lessor. The lessor is permitted but not required to set such standards. Therefore, the disclosure may be omitted by lessors who do not set standards for wear and use.

Item 11. This item provides for disclosure of the maintenance and servicing responsibilities of the parties. These responsibilities

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may be allocated either to the lessor or to the lessee, or may be divided between them.

Item 12. This item discloses all express warranties on the leased property made by the manufacturer or lessor and available to the lessee. A brief identification of the warranty must be supplied. A reference to the standard manufacturer's warranty, for example, would suffice.

Item 13. This item discloses the conditions under which the lessee may terminate the lease prior to the end of the lease term. It also discloses the amount or method of determining the amount of the charge which the lessee must pay for early termination. This item should disclose the conditions under which the lessor may terminate the lease prior to the end of the term, such as default. This item should also be used to disclose the amount or method of determining the amount of any default charges. The charges or method of determing the charges for early termination by the lessor other than for lessee's default should be separately specified in this item. The blank space in 13(c) is provided to indicate whether the appraisal should be, for example, "retail" or "wholesale."

Item 14. This disclosure of the security taken must include, in the space provided, a brief identification of the types of security interests and an identification of the property covered by each.

Item 15. This disclosure indicates the amount or method of determining the amount of any charges for late payment.

Item 16. This item provides alternative disclosures covering the several options a lessor may offer to a lessee to purchase the leased property. A lessor should use the disclosures applicable to the lease plan used. For example, if no option to purchase is offered, only the last sentence of the item should be used. If the lessor offers an option to purchase, the times at which it may be exercised must be supplied. The price must be disclosed for an option exercised at the end of the term and the price or method of computing the price for an option exercised during the lease term must be supplied.

Appendix C

C-3—Model Furniture Lease Disclosures

Date ____________________

These disclosures are provided pursuant to the Federal Consumer Leasing Act.

1. LESSOR(S) ______________________________ **LESSEE(S)** ______________________________

2. Description of leased property (is attached).

Item	Color	Stock =	Mfg.	Qty.					

3. Total Payment Due at Inception: $ ____________
☐ Refundable Security Deposit ☐ Delivery Charge
☐ Advance Monthly Payment of ____________ ☐ ______________________

4. Term of this lease: ____________
The first monthly payment of $ ____________ is due on ____________________; ________ subsequent payments of $ ____________ on the ____________ of each month thereafter.

5. Total Monthly Payment: $ ____________

6. Total of Monthly Payments: $ ____________

7. Total of Other Charges Payable to Lessor: $ ____________
☐ Pick-up Charge $ ____________ ☐ ________________ $ ____________

8. Fees and Taxes
Total amount you will pay during the term for official fees and taxes. $ ____________

9. Insurance
☐ You (lessee) agree to provide insurance coverage of the following types in the following amounts: ______________________________.
☐ We (lessor) will provide the following types and amounts of insurance coverage: ______________________________.
Total premium cost: $ ____________
☐ You agree to pay a waiver fee of $ ____________ per month in lieu of insurance.
Total Waiver Fee: $ ____________

10. Maintenance
[You are responsible for the following maintenance of the leased property: ______________________________.]
[We are responsible for the following maintenance of the leased property: ______________________________.]

11. Warranties
The leased property is subject to the following express warranties: ______________________________
____
____
______________________________.

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Standards for Wear and Use

The following standards are applicable for determining unreasonable or excessive wear and use of the leased property: ________

____

____

____

Early Termination and Default

(a) You may terminate this lease before the end of the lease term under the following conditions: ________

____

________.

The charge for such early termination is ________

____

________.

(b) We may terminate this lease before the end of the lease term under the following conditions: ________

____

____

________.

Upon such termination we shall be entitled to the following charge(s): ________

____

________.

Security Interest

We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: ________

____

________.

Late Payments

The charge for late payments is ________

________.

Option to Purchase

[You have an option to purchase any or all items of the leased property at the following times: ________

________.

If at the end of the term, the price will be $ ________

________.

If prior to the end of the term, the price will be $ ________

________.]

[You have no option to purchase the leased property.]

Appendix C

Instructions for Completion of Model Furniture Lease Disclosures

GENERAL INSTRUCTIONS

Completion of this form may be facilitated by reference to the following instructions. Any question as to the permissibility or accuracy of a specific disclosure may be answered by reference to Regulation M, 12 CFR Part 213.

Information which is required to be disclosed may be estimated if the information is unknown or unavailable, provided that the information is clearly identified as an estimate and the estimate is based on the best information available and is reasonable.

Any inapplicable disclosures should be deleted. This form is based on a monthly periodic payment. Any lessor whose lease contemplates a different payment period should change the form where it refers to "monthly" amounts to read "weekly" or other time period, as appropriate.

All numerical amounts must be stated in figures and shall be printed in not less than the equivalent of ten point type or elite typewritten numerals or legibly handwritten. Paragraph numbers need not be printed in ten point type or its equivalent.

SPECIFIC INSTRUCTIONS

Item 1. The disclosures must be made on a written dated statement. All lessors and lessees must be identified by name. If, for example, one person arranges the lease and another person enters into the lease, both must be identified as lessors. An address may augment the identification but need not be supplied as part of the disclosure form.

Item 2. This disclosure provides a brief description of the leased items. In the left column the name of the item should appear. The relevant entry should be made in the appropriate box in the columns to the right of the names of the items as indicated by the column headings. All of the descriptive elements in the column headings, except the one labeled "Item," are examples only. Those which are inapplicable to a lease plan may be deleted. Other descriptive column headings may be added (as indicated by the blank columns) if the lessor desires.

Item 3. This disclosure shows the total amount of any initial payment the customer must make when the lease is consummated. The components of the initial payment *must* be identified and *may*, at the lessor's option, be itemized with respect to dollar amount. Additional components may be added to the list, as necessary, by use of the blank check box.

The "Advance Monthly Payment" is the total of all amounts collected at the inception of the lease which are to be attributed to a monthly payment(s). For example, if the first month's rental payment is collected at the inception, the form might read "Advance Monthly Payment of the first month's rent" or a similar phrase. If the last month's payment, or any other payment in the nature of rental for a portion of the term, is collected at the inception, appropriate language should be provided to describe the components of the "Advance Monthly Payment."

Item 4. This item discloses the term of the lease, the date of the first periodic payment and the dates or periods of all subsequent periodic payments. The blank spaces should be filled in with the appropriate terms. For example, after the phrase "Term of this lease:" the lessor may place the words "24 months" or "April 2, 1977, through April 2, 1979," as appropriate. In the blank spaces provided after the phrase "The first monthly payment of:" should be the appropriate amount and date. The first monthly payment may be part or all of the "Advance Monthly Payment" disclosed under Item 3. The phrase "subsequent payments of" should be preceded by the appropriate number of payments and followed with the appropriate terms, such as "$100.00 on the 2d of each month thereafter."

Item 5. This item discloses the payment the lessee must make each month. The component parts of the monthly payment may but need not be itemized as to amount.

Item 6. This item discloses the total of the monthly payments payable over the term of the lease. This figure is computed by multiplying the amount of the monthly payment in Item 5 by the number of subsequent payments in Item 4 and adding to that product the amount of the first monthly payment.

Item 7. This item discloses the total of other charges payable to the lessor. This excludes charges for official fees, taxes, insurance and charges disclosed as totals under other items. The individual components must be identified and itemized as to amount. A blank check box is provided in order to add to the list, as necessary.

Item 8. This item discloses the total amount to be paid by the lessee during the lease term for taxes and other official fees.

Item 9. This item provides alternative methods of disclosing insurance coverage. It provides a disclosure for situations in which the lessee provides the coverage, in which case the types and amounts of coverage must be specified. It provides a disclosure for situations in which the lessee procures coverage through the lessor, in which case the types, amounts and costs of coverage must be specified. It also provides for disclosure of a fee in lieu of insurance.

Item 10. This item provides for disclosure of the maintenance and servicing responsibilities of the parties. These responsibilities may be allocated either to the lessor or to the lessee, or may be divided between them.

Item 11. This item discloses all express warranties applicable to the leased property made by the manufacturer or lessor and available to the lessee. A brief identification of the warranty must be supplied. A reference to the standard manufacturer's warranty would suffice.

Item 12. This item discloses standards for wear and use established by the lessor. The lessor is permitted, but not required, to set such standards.

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Item 13. This item discloses the conditions under which the lessee may terminate the lease prior to the end of the lease term. It also discloses the amount or method of determining the amount of the charge which the lessee must pay for early termination. This item should disclose the conditions under which the lessor may terminate the lease prior to the end of the term, such as default. This item should also be used to disclose the amount or method of determining the amount of any default charges. The cahrges or method of determining the charges for early termination by the lessor other than for lessee's default should be separately specified in this item.

Item 14. This disclosure of the security taken must include, in the space provided, a brief identification of the types of security interests and an identification of the property covered by each such interest.

Item 15. This disclosure indicates the amount or method of determing the amount of any charges for late payment.

Item 16. This item provides alternative disclosures covering the several options a lessor may offer to a lessee to purchase the leased property. A lessor should use the disclosures applicable to the lease plan used. For example, if no option to purchase is offered, only the last sentence of the item should be used. If the lessor offers an option to purchase, the times at which it may be exercised must be supplied. The price must be disclosed for an option exercised at the end of the term and the price or method of computing the price for an option exercised during the lease term must be supplied.

APPENDIX D—FEDERAL ENFORCEMENT AGENCIES

The following list indicates which Federal agency enforces Regulation M for particular classes of business. Any questions concerning compliance by a particular business should be directed to the appropriate enforcement agency.

National Banks: Consumer Community and Fair Lending Examination Division, Comptroller of the Currency, Washington, D.C. 20219.

State Member Banks: Federal Reserve Bank serving the district in which the state member bank is located.

Nonmember Insured Banks: Federal Deposit Insurance Corporation Regional Director for the region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (Except for Savings Banks Insured by FDIC): The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions: Regional office of the National Credit Union Administration serving the area in which the Federal credit union is located.

Air Carriers: Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590

Those Subject to Packers and Stockyards Act: Nearest Packers and Stockyards Administration area supervisor.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations: Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, D.C. 20578.

All Other Lessors (Lessors operating on a local or regional basis should use the address of the FTC Regional Office in which they operate): Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

[46 FR 20951, Apr. 7, 1981, as amended at 50 FR 8708, Mar. 5, 1985]

SUPPLEMENT I-CL-1—OFFICIAL STAFF COMMENTARY TO REGULATION M

Introduction

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation M, effective April 1, 1981. Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 U.S.C. 1640). Section 130(f) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedures for requesting interpretations.* Under § 213.1(d) of the regulation, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the FEDERAL REGISTER. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Status of previous interpretations.* All statements and opinions issued by the Federal Reserve Board and its staff interpreting previous Regulation Z remain effective until October 1, 1982, only insofar as they interpret that regulation. When compliance with Regulation M becomes mandatory on October 1, 1982, the Board and staff interpretations of the previous Regulation Z leasing provisions will be entirely superseded by Regulation M and this commentary, except with regard to liability under the previous regulation.

4. *Rules of construction.* (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as "including, but not limited to," "among other things," "for example," or "such as."

(b) Throughout the commentary and regulation, reference to the regulation should be construed to refer to Regulation M, unless the context indicates that a reference to previous Regulation Z (12 CFR Part 226) is also intended.

(c) Throughout the commentary, reference to "this section" or "this paragraph" means the section or paragraph in the regulation that is the subject of the comment.

5. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 213.4(a) are further divided by subparagraph, such as comment 4(a)(1)-1 and comment 4(a)(1)-2. In other cases, comments have more general application and are designated, for example, as comment 4(a)-1. This introduction may be cited as comments I-1 through I-6. The appendices may be cited as comments app. C-1 and app. C-2.

6. *Cross-references.* The following cross-references to related material appear at the end of each section of the commentary: (a) "Statute"—those sections of the Truth in

Lending Act on which the regulatory provision is based;

(b) "Other sections"—other provisions in the regulation necessary to understand that section;

(c) "Previous regulation"—parallel provisions in previous Regulation Z; and

(d) "1981 changes"—a brief description of the major regulatory changes made when the leasing rules were moved from previous Regulation Z to Regulation M.

Section 213.1—General Provisions

1. *Foreign applicability.* Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents (including resident aliens) of any state as defined in § 213.2(a)(16). The regulation does not apply to a foreign branch of a U.S. bank or leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

2. *Issuance of staff interpretations.* This commentary is the method by which the staff provides interpretations that afford formal protection under section 130(f) of the act. This commentary may be amended periodically.

References:

Statute: Sections 102(b), 105, and 130(f).
Previous regulation: Section 226.1.
1981 changes: None.

Section 213.2—Definitions and Rules of Construction

2(a) Definitions.

2(a)(2) "Advertisement".

1. *Coverage.* Only commercial messages that promote consumer lease transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of consumer leases, whether in visual, oral, or print media, are covered by the definition. The list of examples in the definition is not exhaustive; telephone solicitations and letters sent to customers as part of an organized solicitation of business, for example, are also advertisements. The term does *not* include the following:

- Direct personal contacts, such as follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction.
- Informational material distributed only to businesses.
- Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.
- News articles, the use of which is controlled by the news medium.
- Market research or educational materials that do not solicit business.

2. *Persons covered.* See the commentary to § 213.5(a).

2(a)(4) "Arrange for lease of personal property"

1. *General.* The definition of lessor in § 213.2(a)(8) includes one who, in the ordinary course of business, regularly arranges for the leasing of personal property. For example:

- An automobile dealer who, pursuant to a business relationship, completes the necessary lease agreement before forwarding it to the leasing company (to whom the obligation is payable on its face) for execution is "arranging" for the lease.
- An automobile dealer who, receiving no fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not "arranging" for the lease.

2. *Multiple lessors.* See the commentary to § 213.4(c).

3. *Consideration.* The term "other consideration" refers to an actual payment corresponding to a fee or similar compensation. It does not refer to intangible benefits, such as the advantage of increased business, that may flow from the relationship between the parties.

2(a)(6) "Consumer lease".

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If some question exists as to the primary purpose for a lease, the lessor is, of course, free to make the disclosures, and the fact that disclosures are made in such circumstances is not controlling on the question of whether the transaction was exempt. The primary purpose of a lease is generally determined before or at consummation and a subsequent change in primary usage is governed by § 213.4(e).

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than 4 months. Thus, a lease of personal property for 4 months, 3 months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond 4 months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. A lease with a penalty for cancelling during the first 4 months is considered to have a term of more than 4 months. A month-to-month or week-to-week extension of a lease that was originally for 4 months or less is not a consumer lease, even if the extension actually lasts for more than 4 months. For example, a 3-month lease extended on a month-to-month basis and terminated after 1 year does not require consumer lease disclosures.

3. *Organization.* A consumer lease does not include a lease made to an organization,

as defined in § 213.2(a)(9). A lease to an organization is outside the requirements of the regulation even if the property is used (by an employee, for example) primarily for personal, family or household purposes. Likewise, a lease made to an organization is not a consumer lease even if it is guaranteed by or subsequently assigned to a natural person.

4. *Credit sale.* A lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), is not a consumer lease. Regulation Z defines a credit sale, in part, as "a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer—

(i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

(ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement."

5. *Safe deposit boxes.* A lease of a safe deposit box is not a consumer lease for purposes of this regulation.

6. *Leases of personal property incidental to a service.* The following leases of personal property that are incidental to services are not consumer leases subject to the requirements of the regulation:

- Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.
- Burglar alarm systems requiring the installation of leased equipment that triggers a telephone call when a home is burglarized.

2(a)(7) "Lessee".

1. *Guarantors.* Guarantors are not lessees for purposes of the regulation.

2(a)(8) "Lessor".

1. *Assignees.* An assignee may be a lessor for purposes of the regulation in circumstances such as those described in "Ford Motor Credit Co. v. Cenance," 452 U.S. 155, 101 S.Ct. 2239 (1981). In that case, the Supreme Court held that an assignee was a creditor for purposes of previous Regulation Z because of its substantial involvement in the credit transaction.

2(a)(9) "Organization".

1. *Coverage.* The term includes joint ventures and persons operating under a business name.

2(a)(12) "Personal property".

1. *Coverage.* Whether property is considered personal property depends on state or other applicable law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

2(a)(14) "Realized value".

1. *General.* Realized value is not a required disclosure. It refers to the value of the property at early termination or at the end of the lease term. It may be either the retail or wholesale value. Realized value is relevant only to leases in which the lessee's liability at early termination or at the end of the lease term is the difference between the estimated value of the property and its realized value.

2. *Options.* Subject to the contract and to state or other applicable law, the lessor may choose any of the 3 methods for calculating the realized value in determining the lessee's liability at the end of the lease term or at early termination. If the lessor sells the property prior to making that determination, the price received for the property is the realized value. If the lessor does not sell the property prior to making that determination, the lessor may choose either the highest offer or the fair market value as the realized value.

3. *Exclusions.* The realized value may exclude any amount attributable to taxes.

4. *Disposition charges.* Disposition charges may not be subtracted in determining the realized value. If the lessor charges the lessee a fee to cover the disposition expenses, the fee must be disclosed at consummation under § 213.4(g)(5). Disposition charges may be estimated in accordance with § 213.4(d), and this does not prevent the lessor from collecting the actual disposition costs incurred.

5. *Offers.* In determining the highest offer for disposition, the lessor need not consider offers that the offeror has withdrawn or is unable or unwilling to perform.

6. *Appraisals.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in section 183(c) of the act and § 213.4(g)(14); those provisions refer to the lessee's right to an independent professional appraisal.

2(a)(15) "Security interest".

1. *Coverage.* The list of security interests in the definition is not exhaustive. Other than those listed, only interests that are security interests under state or other applicable law are encompassed by the definition. For example, any interest the lessor may have in the leased property falls within this definition only if it is considered a security interest under state or other applicable law.

2. *Disclosable interests.* For purposes of the regulation, a security interest is an interest taken by the lessor to secure performance of the lessee's obligation. For example, if a bank that is not a lessor makes a loan to a leasing company and takes assignments of consumer leases generated by that company to secure the loan, the bank's security interest in the lessor's receivables is not a security interest for purposes of this regulation.

3. *Insurance.* The lessor's right to insurance proceeds or unearned insurance premi-

ums is not a security interest for purposes of this regulation.

2(a)(17) "Total lease obligation".

1. *Disclosure.* The total lease obligation is disclosed under § 213.4(g)(15)(i). It is relevant only to so-called open-end leases in which the lessee's liability at the end of the lease term is based on the difference between the estimated value of the leased property and its realized value.

2. *Periodic payments: disclosure distinguished.* Certain items that may be paid periodically are not part of the lessee's total lease obligation. Therefore, the amount of the scheduled periodic payments for purposes of calculating the total lease obligation may be less than the amount of the periodic payments disclosed under § 213.4(g)(3).

3. *Periodic payments: inclusions and exclusions.* The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation is composed of the following items:

- Any portion of the periodic payments attributable to depreciation, cost of money, and profit.
- Taxes in some cases. See the commentary to § 213.4(g)(15).
- The capitalized cost of mechanical breakdown protection contracts.

The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation does *not* include the following:

- Any amount not paid periodically.
- Any portion of periodic payments attributable to official fees, registration, certificate of title, or license fees.
- Taxes in some cases. See the commentary to § 213.4(g)(15).

At the lessor's option, the capitalized cost of service contracts and insurance premiums may be either included or excluded from this calculation.

4. *Initial payments.* The following amounts are *not* included among the payments at consummation when calculating the total lease obligation:

- Refundable security deposits.
- Official fees and charges disclosable under § 213.4(g)(4).
- "Other charges" disclosable under § 213.4(g)(5).
- The cost of a mechanical breakdown protection contract purchased at consummation.

5. *Estimated value.* See the commentary to § 213.4(d) regarding the use of estimates and section 183(a) of the act regarding the criteria for estimating the value of the leased property at the end of the lease term.

2(a)(18) "Value at consummation".

1. *Disclosure.* The value at consummation is relevant only to so-called open-end leases and is disclosed and subtracted from the total lease obligation under § 213.4(g)(15)(i).

2. *Taxes.* The value at consummation includes taxes paid by the lessor in connection with the acquisition of leased property and amortized over the lease term. See the commentary to § 213.4(g)(15).

3. *Other amounts.* The definition of the value at consummation explicitly permits the lessor to include a profit or markup (without separate itemization). The lessor may include costs of doing business, such as insurance that the lessor purchases on its own behalf. See the commentary to § 213.4(g)(6). The lessor may not include in this amount other items (such as maintenance or extended warranty insurance) that are purchased by the lessee.

2(b) Rules of construction.

1. *Footnotes.* Material that appears in a footnote has the same legal weight as material in the body of the regulation.

2. *Consummation.* When a contractual relationship is created between the lessor and the lessee is a matter to be determined under state or other applicable law; the regulation does not make that determination. Consummation does not occur merely because the lessee has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

References

Statute: Sections 103(g) and 181.

Previous regulation: Section 226.2.

1981 changes: "Agricultural purpose" has been slightly revised to conform to the amended act.

Section 213.3—Exempted Transactions

References

Statute: Section 105(a).

Previous regulation: Section 226.3(f).

1981 changes: None.

Section 213.4—Disclosures

4(a) General requirements.

1. *Basis of disclosures.* The regulation assumes that parties will perform fully according to the lease terms. For example:

- In a 3-year lease with a 1-year minimum term after which there is no penalty for termination, disclosures should be based on the full 3-year term of the lease. The 1-year minimum term is only relevant to the early termination provisions of § 213.4(g) (12), (13), and (14).

2. *Minor variations.* The lessor may disregard the effects of the following in making calculations and disclosures:

- That payments must be collected in whole cents.
- That dates of scheduled payments may be changed because the scheduled date is not a business day.

- That months have different numbers of days.

3. *Form of disclosures.* In making disclosures lessors may cross-reference rather than repeat items that are disclosed elsewhere in the lease disclosure statement. In addition, when a required disclosure consists of a single charge, lessors do not have to repeat the charge as an itemization and a total amount. See the commentary to § 213.4(g) (5) and (15).

4. *Number of transactions.* Lessors have flexibility in handling lease transactions that may be viewed as multiple transactions. For example:

- When a lessor leases two items to the same lessee on the same day, the lessor may disclose the leases as either one or two lease transactions.
- When a lessor sells insurance or other incidental services in connection with a lease, the lessor may disclose in one of two ways: a single lease transaction or a lease and credit sale transaction.

5. *Rebates.* In a lease transaction, a seller's or manufacturer's rebate may be offered to prospective lessees. At the lessor's option, these rebates may be either reflected in or disregarded in the lease disclosures required under the regulation. If the lessor chooses to reflect the rebate in the leasing disclosures, it may be taken into account in any manner as part of those disclosures.

Paragraph 4(a)(1).

1. *Clearly, conspicuously and in meaningful sequence.* This standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no particular mathematical progression or format, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. Appendix C contains model forms that meet this standard, although lessors are not required to use these forms. The requirement that disclosures be made clearly and conspicuously does not mean that they must be more conspicuous than other terms in a combined contract-disclosure statement, nor does it preclude the use of a multi-purpose disclosure form that enables the lessor to designate the specific disclosures applicable to a given transaction. See the commentary to Appendix C.

2. *Type size.* The term "point" in the phrase "10-point type" is a printing term that refers to the size of the body of the type, as distinguished from the size of the type face which may vary among different print manufacturers.

Paragraph 4(a)(2).

1. *Consummation.* See the commentary to § 213.2(b).

2. *Identification of parties.* While disclosures must always be made clearly and conspicuously, it is not necessary to use the words "lessor" or "lessee" when identifying those parties.

3. *Multiple lessors and multiple lessees.* In transactions involving multiple lessors and lessees, the disclosure statement must identify all the lessors and lessees; however, § 213.4(c) permits a single lessor to make all the disclosures to a single lessee.

4. *Integrated lease/disclosure forms.* Contract terms or disclosures that are not required by the regulation may be added to the disclosure statement so long as the required disclosures are made together on a single page (which may include both sides) and above the place for the lessee's signature. Generally, other terms and disclosures may precede, follow, or be intermingled with the regulation's disclosures within the limits of § 213.4(b) governing the use of additional information and the clear, conspicuous, and meaningful sequence disclosure standard in § 213.4(a)(1).

5. *Lessee's signature.* The regulation does not require the lessee to sign the disclosures but, if disclosures are combined with contract terms, the lessor may require the lessee's signature for contract or evidentiary purposes. In such a case, the disclosures must be made above the place for the lessee's signature. When disclosures and contract terms appear on both sides of a page, the consumer's signature usually appears on the bottom of the second side. For purposes of the regulation, the consumer's signature may appear on the bottom of the first side if all the disclosures appear on that side.

Paragraph 4(a)(4).

1. *Permissible uses.* If the lessor chooses to provide foreign-language translations of the disclosures or is required to do so by state, federal, or local law, the translations are not inconsistent per se with disclosures under the regulation and may be provided as additional information under § 213.4(b).

2. *Advertisements in Puerto Rico.* The requirement for providing English disclosures upon request does not apply to advertisements subject to § 213.5 of the regulation.

4(b) Additional information.

1. *State law disclosures.* If state law disclosures are not inconsistent with the act and regulation under § 213.7, the lessor may make those disclosures in accordance with the first sentence of this paragraph. If state law disclosures are inconsistent under § 213.7 and the lessor elects to make them, it must do so in accordance with the second sentence of this paragraph.

4(c) Multiple lessors; multiple lessees.

1. *Multiple lessors.* If a lease transaction involves more than one lessor, the lessors may choose which of them will make the disclosures. All disclosures for the transaction must be given, even if the disclosing lessor would not otherwise have been obligated to make a particular disclosure.

4(d) Unknown-information estimate.

1. *Time of estimated disclosure.* The lessor may use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made. For example:

- Section 213.4(g)(4) requires the lessor to disclose the total amount payable by the lessee during the lease term for official fees, registration, certificate of title, license fees, or taxes. If these amounts are subject to indeterminable increases or decreases over the course of the lease, the lessor may estimate its disclosures based on the rates or charges in effect at the time of disclosure.

2. *Basis of estimates.* Estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The "reasonably available" standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. The lessor normally may rely on the representations of other parties in obtaining information. For example, the lessor might look to the consumer to determine the purpose for which leased property will be used, to insurance companies for the cost of insurance, or to an automobile manufacturer or dealer for the date of delivery.

3. *Estimated value of leased property at termination.* When the lessee's liability at the end of the lease term is based on the estimated value of the leased property (see § 213.4(g)(15)), the estimate must be reasonable and based on the best information reasonably available to the lessor. That standard permits a lessor to use a generally accepted trade publication listing estimated current or future market prices for the leased property, rather than investing in the most sophisticated computer equipment to derive the estimated value at the end of the lease term. The lessor should rely on other information, its experience, or reasonable belief, if those sources provide the best information. For example:

- An automobile lessor offering a 3-year open-end lease intends to assign a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimated value a wholesale value derived from a credible trade publication listing current wholesale values, if the trade publication is the best information available.
- Same facts as above, except that the lessor discloses an estimated value derived by adjusting the value quoted in the trade publication because, in its experience, the trade publication values either understate or overstate the prices actually received in local used vehicle markets. The lessor may adjust estimated values quoted in trade publications based on the lessor's experience or reasonable belief that such values will be understated or overstated.

4. *Retail or wholesale value.* The lessor may choose either a retail or a wholesale value in estimating the value of the leased property at termination, provided that choice is consistent with the lessor's general practice or intention when determining the value of the property at the end of the lease term.

5. *Labelling estimates.* Generally, only the particular disclosure for which the exact information is unknown is labelled as an estimate. However, when several disclosures are affected because of the unknown information, the lessor has the option of labelling as an estimate either every affected disclosure or only the disclosure primarily affected.

6. *Understating the estimated value.* In non-purchase-option leases, the lessor may not use a value lower than that indicated by the best information available when disclosing the estimated value of leased property at the end of the lease term under § 213.4(g)(15).

4(e) Effect of subsequent occurrence.

1. *Subsequent occurrences.* Examples of subsequent occurrences include:

- A change from a monthly to a weekly payment schedule.
- The addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease.
- An increase in official fees or taxes. See the commentary to § 213.4(d).
- An increase in insurance premium or coverage caused by a change in law.
- Late delivery of an automobile caused by a strike.

2. *Redisclosure.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under § 213.4(h).

4(g) Specific disclosure requirements.

1. *Inapplicable disclosures.* The disclosures required by this section need be made only as applicable. Any disclosure not relevant to a particular transaction may be eliminated entirely. For example, if the lessor does not take a security interest, no disclosure is required under § 213.4(g)(9). See the commentary to Appendix C.

2. *Other required disclosures.* The disclosure statement must include the date and identify the lessor and the lessee. See the commentary to § 213.4(a)(2). The lessor need only be identified by name; no address is required.

Paragraph 4(g)(1).

1. *Multiple-item lease.* In a multiple-item lease, the property may be described in separate statements as provided in § 213.4(a)(3).

Paragraph 4(g)(2).

1. *Itemization not required.* The lessor must disclose one total initial payment amount and identify the components of this one amount (for example, capitalized cost

reduction, mechanical breakdown protection, registration fees). The lessor may, but need not, disclose the dollar amount of each component.

2. *Consummation.* See the commentary to § 213.2(b).

3. *Fees payable upon delivery.* This provision does not apply to fees paid at delivery, when delivery occurs after consummation. For example:

- The lessee agrees to pay registration fees, sales taxes, and a delivery charge in one lump sum on the date the automobile is delivered, some time after consummation. None of these charges is an initial payment under § 213.4(g)(2) because they are paid after consummation of the lease. The registration fees and sales taxes are disclosed under § 213.4(g)(4), and the delivery charge is disclosed as an "other charge" under § 213.4(g)(5).

Paragraph 4(g)(3).

1. *Itemization not required.* Section 213.4(g)(3) does not require the lessor to itemize the components of the periodic payments. Some of the components must be disclosed separately if their disclosure is required by other provisions of the regulation, such as official fees and lessee's insurance.

2. *Periodic payments.* The phrase "number, amount, and due dates or periods of payments" requires the disclosure of all payments made periodically. The disclosed payments must include all amounts, such as maintenance and insurance charges, that are paid periodically. In addition, the lessor must disclose the total of such periodic payments. In an open-end lease, however, the lessor may disclose as the total of periodic payments the sum of the scheduled periodic payments referred to in § 213.2(a)(17). See the commentary to § 213.2(a)(17).

Paragraph 4(g)(4).

1. *Taxes.* Taxes that are included in the value at consummation are not disclosed pursuant to this paragraph. See the commentary to § 213.2(a)(18).

Paragraph 4(g)(5).

1. *Coverage.* Section 213.4(g)(5) requires the disclosure of charges that are anticipated by the parties as incident to the normal operation of the lease agreement. It does not require disclosure of charges that are imposed when the lessee terminates early or fails to abide by the lease agreement, such as charges for:

- Late payment.
- Default.
- Early termination.
- Deferral of payments.
- Extension of the lease.

2. *Form of disclosure.* Although the disclosure of an other charge or the total of all other charges must be clear and conspicuous, the lessor need not use the specific terminology "other charge." Moreover, the regulation does not impose a location requirement for the disclosure of other charges. For example:

- A lessor has a single other charge, which is a disposition fee of $100. The lessor may disclose the disposition fee with related disclosures about early or scheduled termination. It may but need not repeat the charge as a total with the label of "other charge" or show a total of other charges.

3. *Relationship to other provisions.* The other charges mentioned in § 213.4(g)(5) are charges that are not required to be disclosed under another provision of § 213.4(g). For example:

- A delivery charge that is paid after consummation is disclosed as an "other charge." A delivery charge that is paid at consummation, however, is disclosed as part of the total initial charges under § 213.4(g)(2), not as an "other charge."
- Occasionally, the price of a mechanical breakdown protection (MBP) contract is disclosed as an "other charge." More often, the price of MBP is reflected in the periodic payment disclosure under § 213.4(g)(3), in which case it is not disclosed as an "other charge". In states where MBP is regarded as insurance, however, the cost should be disclosed in accordance with § 213.4(g)(6), not as an "other charge." See the commentary to § 213.4(g)(6).

4. *Lessee liabilities at the end of the lease term.* Liabilities that the lease imposes upon the lessee at the end of the scheduled lease term and that must be disclosed include, but are not limited to, disposition and "pick-up" charges.

Paragraph 4(g)(6).

1. *Lessor's insurance.* Insurance that is purchased by the lessor primarily for its own benefit, and that is absorbed as a business expense and not separately charged to the lessee, need not be disclosed under § 213.4(g)(6) even if it provides an incidental benefit to the lessee.

2. *Mechanical breakdown protection.* Whether mechanical breakdown protection (MBP) purchased in conjunction with a lease should be treated as insurance is determined by state or other applicable law. In states that do not treat MBP as insurance, the lessor need not make § 213.4(g)(6) disclosures. The lessor may, however, disclose the § 213.4(g)(6) information in such cases in accordance with the additional information provision in § 213.4(b).

Paragraph 4(g)(7).

1. *Brief identification.* The statement identifying warranties may be brief. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty.

2. *Warranty disclaimers.* Although a disclaimer of warranties is not required by the regulation, the lessor may give a disclaimer

as additional information in accordance with § 213.4(b).

3. *State law.* Whether an express warranty or guaranty exists is determined by state or other applicable law.

Paragraph 4(g)(8).

1. *Standards for wear and use.* The lessor is permitted, but not required, to set standards for wear and use (such as excess mileage). The disclosure may be omitted by lessors that do not set such standards. See the commentary to § 213.4(g)(15).

Paragraph 4(g)(9).

1. *Disclosable security interests.* See § 213.2(a)(15) and accompanying commentary to determine what security interests must be disclosed.

Paragraph 4(g)(10).

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under § 213.4(g)(10). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditure of amounts in conjunction with a collection proceeding or upon the employment of an attorney to effect collection, need not be disclosed.

2. *Charges for early termination.* When default is a condition for early termination of a lease, default charges must also be disclosed under § 213.4(g)(12). The § 213.4(g)(10) and (12) disclosures may be combined. Examples of combined disclosures are provided in the model lease disclosure forms in Appendix C.

3. *Simple-interest leases.* In a simple-interest accounting lease, the additional lease charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the lease charge after termination of the lease because the lessee fails to return the leased property does not constitute a default charge. In either case, if the additional charge accrues at a rate higher than the normal lease charge, the lessor must disclose the amount of or the method of determining the additional charge under § 213.4(g)(10).

4. *Extension charges.* Extension charges that exceed the lease charge in a simple-interest accounting lease or that are added separately are disclosed under § 213.4(g)(10).

5. *Reasonableness of charges.* Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable. Section 183(b) of the act sets forth the standards for determining a reasonable penalty or charge.

Paragraph 4(g)(11).

1. *Mandatory disclosure of no purchase option.* Although generally the lessor need only make the specific required disclosures that apply to a transaction, it must disclose affirmatively that the lessee has no option to purchase the leased property when the purchase option is inapplicable.

2. *Existence of purchase option.* Whether a purchase option exists is determined by state or other applicable law. The lessee's right to submit a bid to purchase property at termination of the lease is not an option to purchase under § 213.4(g)(11) if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.

3. *Purchase option fees.* A purchase option fee must be disclosed under this paragraph unless the lessor discloses the fee under § 213.4(g)(5) as an other charge.

Paragraph 4(g)(12).

1. *Default.* When default is also a condition for early termination of a lease, default charges must be disclosed under this paragraph. See the commentary to § 213.4(g)(10).

2. *Lessee's liability at early termination.* When the lessee is liable for the difference between the unamortized capitalized cost and the realized value at early termination, the amount or the method of determining the amount of the difference must be disclosed under this paragraph.

3. *Reasonableness of charges.* Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable. Section 183(b) of the act sets forth the standards for determining a reasonable penalty or charge.

Paragraph 4(g)(14).

1. *Disclosure inapplicable.* When the lessee is liable at the end of the lease term or at early termination for unreasonable wear or use but *not* for the estimated value of the leased property, the lessor need not disclose the lessee's right to an independent appraisal. For example:

- The automobile lessor may reasonably expect a lessee to return an undented car with four good tires at the end of the lease term. Even though it holds the lessee liable for the difference between a dented car with bald tires and the value of a car in reasonably good repair, the lessor is not required to disclose the lessee's appraisal right.

2. *Lessor's appraisal.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in § 183(c) of the act, and the lessor still must disclose the lessee's independent right to an appraisal under § 213.4(g)(14).

3. *Time restriction on appraisal.* Neither the act nor the regulation specifies any time period in which the lessee must exercise the appraisal right. The lessor may require a lessee to obtain the appraisal within a reasonable time after termination of the lease.

The regulation does not define what is a "reasonable time."

Paragraph 4(g)(15).

1. *Coverage.* The disclosure under Paragraph 4(g)(15) limiting the lessee's liability for the value of the leased property does not apply at early termination.

2. *Total lease obligation.* The requirement that the total lease obligation be itemized is satisfied by disclosing the 3 components in the definition of total lease obligation in § 213.2(a)(17) with their corresponding amounts. The lessor may cross-reference the individual components disclosed elsewhere in the lease disclosure statement, as done in Appendix C-1.

3. *Taxes.* Taxes included in the value at consummation are included in the total lease obligation. Taxes not included in the value at consummation may, but need not, be included in the total lease obligation at the lessor's option. See the commentary to § 213.2(a)(18).

4. *Leases with a minimum term.* If a lease has an alternative minimum term, the § 213.2(g)(15) disclosures governing the liability limitation are not applicable for the minimum term. See the commentary to § 213.4(a).

5. *Average payment allocable to a monthly period.* The phrase "average payment allocable to a monthly period" is based on the periodic payment used to compute the total lease obligation. See the commentary to § 213.2(a)(17).

6. *Charges not subject to rebuttable presumption.* The limitation on liability applies only to liability that is based on the estimated value of the property at the end of the lease term. The lessor also may recover additional charges from the lessee at the end of the lease term. Examples of such additional charges include:

- Disposition charges.
- Excess mileage charges.
- Late payment and default charges.
- Amounts by which the unamortized capitalized cost exceeds the estimated residual value that have accrued in simple interest accounting leases because the lessee has made late payments.

4(h) Renegotiations or extensions.

1. *General coverage.* Section 213.4(h) applies only to existing leases that were covered by the requirements of the regulation or previous Regulation Z. It therefore does not apply to the renegotiation or extension of leases with an initial term of 4 months or less, because such leases are not covered by the definition of consumer lease in § 213.2(a)(6).

2. *Renegotiation defined.* A renegotiation occurs when an existing consumer lease is satisfied and replaced by a new lease undertaken by the same lessee. A renegotiation is a new lease requiring new disclosures. Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

3. *Renegotiation exceptions.* The following events are not renegotiations even if they are accomplished by satisfying and replacing an existing lease:

- A substitution of leased property in a multiple-item lease, provided the average payment is not changed by more than 25 percent.
- A reduction in the lease charge.
- A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed.

4. *Extension defined.* An extension is any continuation of an existing consumer lease beyond the originally scheduled termination date, but only if the continuation is not the result of a renegotiation. The continuation must be agreed to by both the lessor and the lessee. An extension that exceeds 6 months is a new lease requiring new disclosures.

5. *Time of extension disclosures.* If a consumer lease is extended for a specified term greater than 6 months, new disclosures are required at the time the extension is agreed to. If the lease is extended on a month-to-month basis and exceeds 6 months, new disclosures are required at the commencement of the seventh month. If a consumer lease is extended for several terms, one of which will exceed 6 months beyond the originally scheduled termination date of the lease, new disclosures are required at the commencement of the term that will exceed 6 months beyond the originally scheduled termination date.

6. *Inapplicable disclosures.* Disclosures that are inapplicable to the terms of a renegotiation or extension need not be given. For example:

- If the term for which extension disclosures are given is 1 month and the lessee will pay no official fees and taxes during that month, no disclosure of those amounts is necessary.
- If a renegotiation involves no initial charges, no disclosure of initial charges is necessary.

7. *Court proceedings.* No disclosures are required if a renegotiation or extension results from an agreement involving a court proceeding.

8. *Deferrals.* No disclosures are required if one or more payments are deferred, whether or not a fee is charged.

9. *Assumptions.* No disclosures are required when a consumer lease is assumed by another person, whether or not an assumption fee is charged.

References

Statute: Sections 102(b), 121, 122, 124, 182, and 183.

Other sections: Sections 213.2, 213.5, and 213.7 and Appendix C.

Previous regulation: Sections 226.6 and 226.15.

1981 changes: Although reorganized, the disclosure requirements are substantially the same as the previous requirements. The sole amendment implements section 121 of the Truth in Lending Act pertaining to multiple lessors and lessees.

Section 213.5—Advertising

5(a) General rule.

1. *Persons covered.* All "persons" must comply with the advertising provisions in this section, not just those that meet the definition of lessor in § 213.2(a)(8). Thus, automobile dealers, merchants, and others who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions. The owner and personnel of the medium in which an advertisement appears or through which it is disseminated, however, are not subject to civil liability for violations under section 184(b) of the act.

2. *"Usually and customarily."* Section 213.5(a) is not intended to prohibit the advertising of a single item or the promotion of new leasing programs, but to bar the advertising of terms that are not and will not be available. Thus, an advertisment may state terms that will be offered for only a limited period or terms that will become available at a future date.

5(b) Catalogs and multipage advertisements.

1. *General rule.* The multiple-page advertisements to which § 213.5(b) refers are advertisements consisting of a numbered series of pages—for example, a supplement to a newspaper. A mailing comprised of several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

2. *Cross-references.* A multiple-page advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule clearly stating sufficient information for the reader to determine the disclosures required under § 213.5(c) (1) through (5). If one of the triggering terms listed in § 213.5(c) appears on another page of the catalog or multiple-page advertisement, that page must clearly refer to the specific page where the table, chart, or schedule begins.

5(c) Terms that require additional information.

1. *Clear and conspicuous standard.* Section 213.5(c) prescribes no specific rules for the format of the necessary disclosures. The terms need not be printed in a certain type size and need not appear in any particular place in the advertisement.

2. *Triggering terms.* Whenever certain triggering terms appear in lease advertisements, the additional terms enumerated in § 213.5(c) (1) through (5) must also appear. An example of one or more typical leases with a statement of all the terms applicable to each may be used. The additional terms must be disclosed even if the triggering term is not stated explicitly, but is readily determinable from the advertisement. For example, if an advertisement states a 5-year lease term with monthly payments, the number of required payments—a triggering term—is readily apparent.

5(d) Multiple-item leases; merchandise tags.

1. *Merchandise tags.* Section 213.5(d) provides a method for using merchandise tags without including all the required disclosures on the tags. As an alternative to this disclosure method, a merchandise tag may state all the necessary terms on one or both sides of the tag. If the terms are on both sides of the tag, both sides must be accessible to the consumer.

References

Statute: Sections 105(a) and 184.

Other sections: Sections 213.2(a) (2) and (6).

Previous regulation: Sections 226.10 (a), (b), (g), and (h).

1981 changes: None.

Section 213.6—Preservation and Inspection of Evidence of Compliance

1. *Preservation methods.* Lessors must retain evidence that they performed required actions as well as made required disclosures. Adequate evidence of compliance does not require actual paper copies of disclosure statements or other business records. The evidence may be retained on microfilm, microfiche, or by any other method designed to reproduce records accurately (including computer programs). The lessor need retain only enough information to reconstruct the required disclosures or other records.

References

Statute: Section 105(a)

Previous regulation: Section 226.6(i)

1981 changes: A uniform 2-year record-retention rule replaces the previous requirement that records be retained through at least one compliance examination.

Section 213.7—Inconsistent State Requirements

1. *Procedures.* Only states (through their authorized officials) may request and receive determinations on inconsistency. The procedures for requesting a Board determination on inconsistency are contained in Appendix B.

2. *Inconsistent state disclosures.* A lessor that chooses to make inconsistent state disclosures must do so in the manner prescribed by § 213.4(b).

References

Statute: Sections 111(a)(1) and 186(a).

Other sections: Sections 213.2(a)(16) and 213.4(b) and Appendix B.

Previous regulation: Section 226.6(b)(3).

1981 changes: None.

Section 213.8—Exemption of Certain State-Regulated Transactions

1. *Classes eligible.* The state determines the classes of transactions for its exemption and makes its application for those classes. Classes might be, for example, all automobile leases or all leases in which the lessor is a bank.

2. *Substantial similarity.* The "substantially similar" standard requires that state statutory or regulatory provisions and state interpretations of those provisions must be generally the same as the federal act and the regulation. A state will be eligible for an exemption even if its law covers classes of transactions not covered by the federal law. For example, if a state's law covers leases for agricultural purposes, this will not prevent the Board from granting an exemption for consumer leases, even though leases for agricultural purposes are not covered by the federal law.

3. *Adequate enforcement.* The standard requiring adequate provision for enforcement generally means that appropriate state officials are authorised to enforce the state law through procedures and sanctions comparable to those available to federal enforcement agencies.

References

Statute: Sections 111(a)(2) and 186(b).

Other sections: Sections 213.2(a)(16) and 213.4(b) and Appendix A.

Previous regulation: Section 226.6(b)(3).

1981 changes: None.

APPENDIX A—PROCEDURES AND CRITERIA FOR STATE EXEMPTIONS

References

Statute: Section 186(b).

Other sections: Section 213.8.

Previous regulation: Section 226.80 (Supplement VI, Section I).

1981 changes: None.

APPENDIX B—PROCEDURES AND CRITERIA FOR BOARD DETERMINATION REGARDING PREEMPTION

References:

Statute: Section 186(a).

Other sections: Section 213.7.

Previous regulation: Section 226.80 (Supplement VI, Section II).

1981 changes: None.

APPENDIX C—MODEL FORMS

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. The changes to the model forms may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms. Examples of acceptable changes include:

- Using the first person, instead of the second person, in referring to the lessee.
- Using "lessee," "lessor," or names instead of pronouns.
- Rearranging the sequence of the disclosures.
- Incorporating certain state "plain English" requirements.
- Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "O," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multi-purpose standard forms.)
- Adding language or symbols to indicate estimates.

2. *Model open-end or finance vehicle lease disclosures.* Model C-1 is designed for an open-end or finance lease of a vehicle. An open-end or finance lease is one in which the lessee's liability at the end of the lease term is based on the difference between the estimated value of the leased property and its realized value. Section 213.4(g)(15)(i) requires disclosure of an itemized total lease obligation for such leases. To facilitate this disclosure, Model C-1 divides the initial charges (item 3) into two categories: Those that are included in the total lease obligation and those that are not. The amount of the monthly payment (item 4) is similarly divided. This format permits the components of the total lease obligation (item 11) to be disclosed simply by cross-reference to the previous items. See the commentary to § 213.2(a)(17). The inclusion of taxes in the basic monthly payment disclosure (mentioned in the instructions to item 4(a)) is not mandatory in all cases. See the commentary to § 213.4(g)(15).

3. *Model closed-end or net vehicle lease disclosures.* Model C-2 is designed for a closed-end or net lease of a vehicle. A closed-end or net lease is one in which the lessee's liability at the end of the lease term

is *not* based on the difference between the estimated value of the leased property and its realized value. Item 13(c) is included for those closed-end vehicle leases in which the lessee's liability at early termination is based on the vehicle's estimated value. See § 213.4(g)(14).

4. *Model furniture lease disclosures.* Model C-3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination that is required under § 213.4(g)(14) because few closed-end furniture leases base the lessee's liability at early termination on the estimated value of the leased property. The disclosure may be added, if it is applicable, without loss of the form's protection from civil liability.

References

Statute: Sections 105, 130, and 185.
Previous regulation: Sections 226.1501, 226.1502, and 226.1503.
1981 changes: References in the instructions to the previous regulations have been deleted.

APPENDIX D—FEDERAL ENFORCEMENT AGENCIES

References

Statute: Section 108.
Previous regulation: Appendix E.
1981 changes: None.

(15 U.S.C. 1640(f))

[47 FR 20554, May 13, 1982]

PART 214—RELATIONS WITH FOREIGN BANKS AND BANKERS

REGULATIONS

Sec.
214.1 Scope of part.
214.2 Information to be furnished to the Board.
214.3 Conferences and negotiations with foreign banks, bankers, or States.
214.4 Agreements with foreign banks, bankers, or States, and participation in foreign accounts.
214.5 Accounts with foreign banks.
214.6 Amendments.

AUTHORITY: 12 U.S.C. 248, 348a, 358, 632.

SOURCE: Reg. N, 8 FR 17290, Dec. 24, 1943, unless otherwise noted.

REGULATIONS

§ 214.1 Scope of part.

Pursuant to the authority conferred upon it by section 14 of the Federal Reserve Act, as amended (40 Stat. 235, 48 Stat. 181; 12 U.S.C. 358, 348a), and by other provisions of law, the Board of Governors of the Federal Reserve System prescribes the following regulations governing relationships and transactions between Federal Reserve Banks and foreign banks or bankers or groups of foreign banks, or bankers, or a foreign State as defined in section 25(b) of the Federal Reserve Act (55 Stat. 131; 12 U.S.C. 632).

§ 214.2 Information to be furnished to the Board.

In order that the Board of Governors of the Federal Reserve System may perform its statutory duty of exercising special supervision over all relationships and transactions of any kind entered into by any Federal Reserve Bank with any foreign bank or banker or with any group of foreign banks or bankers or with any foreign State, each Federal Reserve Bank shall promptly submit to the Board of Governors of the Federal Reserve System in writing full information concerning all existing relationships and transactions of any kind heretofore entered into by such Federal Reserve Bank with any foreign bank or banker or with any group of foreign banks or bankers or with any foreign State and copies of all written agreements between it and any foreign bank or banker or any group of foreign banks or bankers or any foreign State which are now in force, unless copies have heretofore been furnished to the Board. Each Federal Reserve Bank shall also keep the Board of Governors of the Federal Reserve System promptly and fully advised of all transactions with any foreign bank or banker or with any group of foreign banks or bankers or with any foreign State, except transactions of a routine character.

§ 214.3 Conferences and negotiations with foreign banks, bankers, or States.

(a) Without first obtaining the permission of the Board of Governors of the Federal Reserve System, no officer or other representative of any Federal Reserve Bank shall conduct negotiations of any kind with the officers or representatives of any foreign bank or banker or any group of foreign banks or bankers of any foreign State, except communications in the ordinary course of business in connection with transactions pursuant to agreements previously approved by the Board of Governors of the Federal Reserve System. Any request for the Board's permission to conduct any such negotiations shall be submitted in writting and shall include a full statement of the occasion and objects of the proposed negotiations.

(b) The Board of Governors of the Federal Reserve System reserves the right, in its discretion, to be represented by such representatives as it may designate in any negotiations between any officer or other representative of any Federal Reserve Bank and any officers or representatives of any foreign bank or banker or any group of foreign banks or bankers or any foreign State; and the Board shall be given reasonable notice in advance of the time and place of any such negotiations; and may itself designate the time and place of any such negotiations.

(c) A full report of all such conferences or negotiations and all understandings or agreements arrived at or transactions agreed upon and all other material facts appertaining to such conferences or negotiations shall be filed with the Board of Governors of the Federal Reserve System in writing by a duly authorized officer of each Federal Reserve Bank which shall have participated in such conferences or negotiations, including copies of all correspondence appertaining thereto.

§ 214.4 Agreements with foreign banks, bankers, or States, and participation in foreign accounts.

(a) No Federal Reserve Bank shall enter into any agreement, contract, or understanding with any foreign bank or banker or with any group of foreign banks or bankers or with any foreign State without first obtaining the permission of the Board of Governors of the Federal Reserve System.

(b) When any Federal Reserve Bank, with the approval of the Board of Governors of the Federal Reserve System, has opened an account for any foreign bank or banker or group of foreign banks or bankers or for any foreign State, or has entered into any agreement, contract, or understanding with reference to opening or maintaining such an account, or with reference to any other matter or matters, any other Federal Reserve Bank may participate in such account, or in such agreement, contract, or understanding, and in operations and transactions performed therein or pursuant thereto, with the approval of the Board of Governors of the Federal Reserve System.

§ 214.5 Accounts with foreign banks.

(a) Any Federal Reserve Bank, with the consent of the Board, may open and maintain accounts payable in foreign currencies with such foreign banks as may be designated by the Board.

(b) Notwithstanding other provisions of this part, any officer or other representatives of the Federal Reserve Bank which maintains an account with a foreign bank may conduct such negotiations and enter into such agreements, contracts, or understandings with such foreign bank as may be authorized or directed by the Federal Open Market Committee in order to effectuate the conduct of open market transactions of the Federal Reserve Banks incident to the opening, maintenance, operation, increase, reduction, or discontinuance of such account; and, in any such case, such negotiations, agreements, contracts, or understandings shall be subject to such authorizations, directions, regulations, and limitations as may be prescribed by, or pursuant to authority of, the Federal Open Market Committee.

(c) Any Federal Reserve Bank may, when authorized or directed so to do by, or under the authority of, the Federal Open Market Committee, carry on or conduct, through any other Federal Reserve Bank which maintains an account with a foreign bank, any open market transactions authorized by section 14 of the Federal Reserve Act. Transactions authorized by section 14 which are not open market transactions may be carried on or conducted through such other Federal Reserve

Bank only with the approval of the Board.

(d) Notwithstanding other provisions of this part, reports with respect to any accounts opened and maintained, and negotiations, agreements, contracts, and understandings entered into, pursuant to this section shall be made to the Board at least quarterly, and more frequently if so requested by the Board, by a duly authorized officer of the Federal Reserve Bank involved.

[Reg. N, 27 FR 1719, Feb. 22, 1962]

§ 214.6 Amendments.

The Board of Governors of the Federal Reserve System reserves the right, in its discretion, to alter, amend or repeal these regulations and to prescribe such additional regulations, conditions, and limitations as it may deem desirable, respecting relationships and transactions of any kind entered into by any Federal Reserve Bank with any foreign bank or banker or with any group of foreign banks or bankers or with any foreign State.

[Reg. N, 8 FR 17290, Dec. 24, 1943. Redesignated at 27 FR 1719, Feb. 22, 1962]

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

Sec.
215.1 Authority, purpose, and scope.
215.2 Definitions.
215.3 Extension of credit.
215.4 General prohibitions.
215.5 Additional restrictions on loans to executive officers of member banks.
215.6 Extensions of credit outstanding on March 10, 1979.
215.7 Records of member banks.
215.8 Reports by executive officers.
215.9 Report on credit to executive officers.
215.10 Disclosure of credit from member banks to executive officers and principal shareholders.
215.11 Civil penalties.
APPENDIX—SECTION 5200 OF THE REVISED STATUTES

Sec.
Subpart B—Reports on Indebtedness of Executive Officers and Principal Shareholders to Correspondent Banks

215.20 Authority, purpose, and scope.
215.21 Definitions.
215.22 Report by executive officers and principal shareholders.
215.23 Disclosure of credit from correspondent banks to executive officers and principal shareholders.

AUTHORITY: Secs. 11(i), 22(g) and 22(h), Federal Reserve Act (12 U.S.C. 248(i), 375a, 375b(7), and 12 U.S.C. 1817(k)(3) and 1972(2)(F)(vi).

SOURCE: 44 FR 12964, Mar. 9, 1979, unless otherwise noted.

Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

§ 215.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to sections 11(i), 22(g) and 22(h) of the Federal Reserve Act (12 U.S.C. 248(i), 375a, 375b(7)) and 12 U.S.C. 1817(k)(3).

(b) *Purpose and scope.* This subpart governs any extension of credit by a member bank to an executive officer, director, or principal shareholder of (1) the member bank, (2) a bank holding company of which the member bank is a subsidiary, and (3) any other subsidiary of that bank holding company. It also applies to any extension of credit by a member bank to (1) a company controlled by such a person and (2) a political or campaign committee that benefits or is controlled by such a person. This subpart also implements the reporting requirements of 12 U.S.C. 375a concerning extensions of credit by a member bank to its executive officers and of 12 U.S.C. 1817(k) concerning extensions of credit by a member bank to its executive officers and principal shareholders.

[44 FR 67978, Nov. 28, 1979]

§ 215.2 Definitions.

For the purposes of this subpart, the following definitions apply unless otherwise specified:

(a) "Company" means any corporation, partnership, trust (business or otherwise), association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of business entity not specifically listed herein. However, the term does not include (1) an insured bank (as defined in 12 U.S.C. 1813(h)) or (2) a corporation the majority of the shares of which are owned by the United States or by any State.

(b)(1) "Control of a company or bank" means that a person directly or indirectly, or acting through or in concert with one or more persons:

(i) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the company or bank;

(ii) Controls in any manner the election of a majority of the directors of the company or bank; or

(iii) Has the power to exercise a controlling influence over the management or policies of the company or bank.

(2) A person is presumed to have control, including the power to exercise a controlling influence over the management or policies, of a company or bank if:

(i) The person is (A) an executive officer or director of the company or bank and (B) directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank; or

(ii) (A) The person directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank, and (B) no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(3) An individual is not considered to have control, including the power to exercise a controlling influence over the management or policies, of a company or bank solely by virtue of the individual's position as an officer or director of the company or bank.

(4) A person may rebut a presumption established by paragraph (b)(2) of this section by submitting to the appropriate Federal banking agency (as defined in 12 U.S.C. 1813(q)) written materials that, in the agency's judgment, demonstrate an absence of control.

(c) "Director of a member bank" includes (1) any director of a member bank, whether or not receiving compensation, (2) any director of a bank holding company (as defined in 12 U.S.C. 1841(a)) of which the member bank is a subsidiary, and (3) any director of any other subsidiary of that bank holding company. An advisory director is not considered a director if the advisory director (i) is not elected by the shareholders of the company or bank, (ii) is not authorized to vote on matters before the board of directors, and (iii) provides solely general policy advice to the board of directors.

(d) "Executive officer" of a company or bank means a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company or bank, whether or not: (1) The officer has an official title, (2) the title designates the officer an assistant, or (3) the officer is serving without salary or other compensation.[1] The chairman of the board, the president, every vice president, the cashier, the secretary, and the treasurer of a company or bank are considered executive officers, unless (i) the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company, from participation (other than in the capacity of a director) in major policymaking functions of the bank or company, and (ii) the officer does not actually participate therein. For the purpose of §§ 215.4 and 215.7 of this part, an executive officer of a member bank includes an executive officer of (A) a bank holding company (as defined in 12 U.S.C. 1841(a)) of which the member bank is a subsidiary and (B) any other subsidiary of that bank holding company, unless the executive officer of the subsidiary (*1*) is excluded (by name or by title) from participation in major policymaking functions of the member bank by resolutions of the boards of directors of both the subsidiary and the member bank, and (*2*) does not actually participate in such major policymaking functions.

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[1] The term is not intended to include persons who may have official titles and may exercise a certain measure of discretion in the performance of their duties, including discretion in the making of loans, but who do not participate in the determination of major policies of the bank or company and whose decisions are limited by policy standards fixed by the senior management of the bank or company. For example, the term does not include a manager or assistant manager of a branch of a bank unless that individual participates, or is authorized to participate, in major policymaking functions of the bank or company.

(e) "Immediate family" means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(f) The "lending limit" for a member bank is an amount equal to the limit of loans to a single borrower established by section 5200 of the Revised Statutes.[2] 12 U.S.C. 84. This amount is 15 per cent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are not fully secured, and and additional 10 per cent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan. The lending limit also includes any higher amounts that are permitted by section 5200 of the Revised Statutes for the types of obligations listed therein as exceptions to the limit. A member bank's capital stock and unimpaired surplus equals the sum of (1) the "total equity capital" of the member bank reported on its most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3), (2) any subordinated notes and debentures approved as an addition to the member bank's capital structure by the appropriate Federal banking agency, and (3) any valuation reserves created by charges to the member bank's income.

(g) "Member bank" means any banking institution that is a member of the Federal Reserve System. The term does not include any foreign bank (as defined in 12 U.S.C. 3101(b)(7)) that maintains a branch in the United States, whether or not the branch is insured (within the meaning of 12 U.S.C. 1813(s)) and regardless of the operation of 12 U.S.C. 1813(h) and 12 U.S.C. 1828(j)(2).

(h) "Pay an overdraft on an account" means to pay an amount upon the order of an account holder in excess of funds on deposit in the account.

(i) "Person" means an individual or a company.

(j) "Principal shareholder" means an individual or a company (other than an insured bank) that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company. However, for the purposes of § 215.4(c) of this part, this percentage shall be "more than 18 percent" if the member bank is located in a city, town, or village with a population of less than 30,000. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual. A principal shareholder of a member bank includes (1) a principal shareholder of a bank holding company (as defined in 12 U.S.C. 1841(a)) of which the member bank is a subsidiary and (2) a principal shareholder of any other other subsidiary of that bank holding company.

(k) "Related interest" means (1) a company that is controlled by a person or (2) a political or campaign committee that is controlled by a person or the funds or services of which will benefit a person.

(l) "Subsidiary" has the meaning given in 12 U.S.C. 1841(d), but does not include a subsidiary of a member bank.

[44 FR 12964, Mar. 9, 1979, as amended at 44 FR 67979, Nov. 28, 1979; 48 FR 42805, Sept. 20, 1983]

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[2] Where State law establishes a lending limit for a State member bank that is lower than the amount permitted in section 5200 of the Revised Statutes, the lending limit established by applicable State laws shall be the lending limit for the State member bank.

§ 215.3 Extension of credit.

(a) An extension of credit is a making or renewal of any loan, a granting of a line of credit, or an extending of credit in any manner whatsoever, and includes:

(1) A purchase under repurchase agreement of securities, other assets, or obligations;

(2) An advance by means of an overdraft, cash item, or otherwise;

(3) Issuance of a standby letter of credit (or other similar arrangement regardless of name or description) or an ineligible acceptance, as those terms are defined in § 208.8(d) of this chapter;

(4) An acquistion by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;

(5) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse; but the acquisition of such paper by a member bank from another bank, without recourse, shall not be considered a discount by the member bank for the other bank;

(6) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for (i) accrued interest or (ii) taxes, insurance, or other expenses incidental to the existing indebtedness;

(7) An advance of unearned salary or other unearned compensation for a period in excess of 30 days; and

(8) Any other transaction as a result of which a person becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(b) An extension of credit does not include:

(1) An advance against accrued salary or other accrued compensation, or an advance for the payment of authorized travel or other expenses incurred or to be incurred on behalf of the bank;

(2) A receipt by a bank of a check deposited in or delivered to the bank in the usual course of business unless it results in the carrying of a cash item for or the granting of an overdraft (other than an inadvertent overdraft in a limited amount that is promptly repaid, as described in § 215.4(d) of this part);

(3) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through (i) a merger or consolidation of banks or a similar transaction by which a bank acquires assets and assumes liabilities of another bank or similar organization or (ii) foreclosure on collateral or similar proceeding for the protection of the bank: *Provided*, That such indebtedness is not held for a period of more than three years from the date of the acquisition, subject to extension by the appropriate Federal banking agency for good cause;

(4)(i) An endorsement or guarantee for the protection of a bank of any loan or other asset previously acquired by the bank in good faith or (ii) any indebtedness to a bank for the purpose of protecting the bank against loss or of giving financial assistance to it; or

(5) Indebtedness of $5,000 or less arising by reason of any general arrangement by which a bank (i) acquires charge or time credit accounts or (ii) makes payments to or on behalf of participants in a bank credit card plan, check credit plan, interest bearing overdraft credit plan of the type specified in § 215.4(d) of this part, or similar openend credit plan: *Provided:*

(A) The indebtedness does not involve prior individual clearance or approval by the bank other than for the purposes of determining authority to participate in the arrangement and compliance with any dollar limit under the arrangement, and (B) the indebtedness is incurred under terms that are not more favorable than those offered to the general public.

(c) Non-interest-bearing deposits to the credit of a bank are not considered loans, advances, or extensions of credit to the bank of deposit; nor is the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business considered to be a loan, advance or extension of credit to the depositing bank.

(d) For purposes of § 215.4(b) and (c) of this part, an extension of credit by a member bank is considered to have been made at the time the bank enters into a binding commitment to make the extension of credit.

(e) A participation without recourse is considered to be an extension of credit by the participating bank, not by the originating bank.

(f) An extension of credit is considered made to a person covered by this part to the extent that the proceeds of the extension of credit are used for the tangible economic benefit of, or are transferred to, such a person.

§ 215.4 General prohibitions.

(a) *Terms and creditworthiness.* No member bank may extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of that person unless the extension of credit:

(1) Is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this part and who are not employed by the bank, and (2) does not involve more than the normal risk of repayment or present other unfavorable features.

(b) *Prior approval.* (1) No member bank may extend credit (which term includes granting a line of credit) to any of its executive officers, directors, or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of $25,000 or 5 percent of the member bank's capital and unimpaired surplus, unless:

(i) The extension of credit has been approved in advance by a majority of the entire board of directors of that bank, and (ii) the interested party has abstained from participating directly or indirectly in the voting. In no event may a member bank extend credit to any one of its executive officers, directors, or principal shareholders, or to any related interest of that person, in an amount that, when aggregated with all other extensions of credit to that person, and all related interests of that person, exceeds $500,000, except by complying with the requirements of this paragraph.

(2) Approval by the board of directors under paragraph (b)(1) of this section is not required for an extension of credit that is made pursuant to a line of credit that was approved under paragraph (b)(1) of this section within 14 months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of § 215.4(a) of this part.

(3) Participation in the discussion, or any attempt to influence the voting, by the board of directors regarding an extension of credit constitutes indirect participation in the voting by the board of directors on an extension of credit.

(c) *Aggregate lending limit.* No member bank may extend credit to any of its executive officers or principal shareholders or to any related interest of that person[3] in an amount that, when aggregated with the amount of all other extensions of credit by the member bank to that person and to all related interests of that person, exceeds the lending limit of the member bank specified in § 215.2(f) of this part. This prohibition does not apply to an extension of credit by a member bank to a bank holding company (as defined in 12 U.S.C. 1841(a)) of which the member bank is a subsidiary or to any other subsidiary of that bank holding company.

(d) *Overdrafts.* No member bank may pay an overdraft of an executive officer or director of the bank[4] on an

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[3] This prohibition does not apply to member bank loans to a director of the member bank or to a related interest of the director, unless the director is also an executive officer or principal shareholder. See also the definition of principal shareholder in § 215.2(j) of this part, in the case of a member bank located in a city, town or village with a population of less than 30,000.

[4] This prohibition does not apply to the payment by a member bank of an overdraft of a principal shareholder of the member bank, unless the principal shareholder is also an executive officer or director. This

Continued

account at the bank, unless the payment of funds is made in accordance with (1) a written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment or (2) a written, preauthorized transfer of funds from another account of the account holder at the bank. This prohibition does not apply to payment of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less: *Provided*, (1) The account is not overdrawn for more than 5 business days, and (2) the member bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances.

[44 FR 12964, Mar. 9, 1979, as amended at 48 FR 42805, Sept. 20, 1983]

§ 215.5 Additional restrictions on loans to executive officers of member banks.

(a) No member bank may extend credit to any of its executive officers,[5] and no executive officer of a member bank shall borrow from or otherwise become indebted to the bank, except in the amounts, for the purposes, and upon the conditions specified in paragraphs (c) and (d) of this section.

(b) No member bank may extend credit in an aggregate amount greater than the amount permitted in paragraph (c)(3) of this section to a partnership in which one or more of the bank's executive officers are partners and, either individually or together, hold a majority interest. For the purposes of paragraph (c)(3) of this section, the total amount of credit extended by a member bank to such partnership is considered to be extended to each executive officer of the member bank who is a member of the partnership.

(c) A member bank is authorized to extend credit to any executive officer of the bank:

(1) In any amount to finance the education of the executive officer's children;

(2) In any amount to finance the purchase, construction, maintenance, or improvement of a residence of the executive officer, if the extension of credit is secured by a first lien on the residence and the residence is owned (or expected to be owned after the extension of credit) by the executive officer; and

(3) For any other purpose not specified in § 215.5(c)(1) and (2), if the aggregate amount of loans to that officer under this paragraph does not exceed at any one time the higher of 2.5 per cent of the bank's capital and unimpaired surplus or $25,000, but in no event more than $100,000.

(d) Any extension of credit by a member bank to any of its executive officers shall be: (1) Promptly reported to the member bank's board of directors; (2) in compliance with the requirements of § 215.4(a) of this part; (3) preceded by the submission of a detailed current financial statement of the executive officer; and (4) made subject to the condition that the extension of credit will, at the option of the member bank, become due and payable at any time that the officer is indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in paragraph (c) of this section.

[44 FR 12964, Mar. 9, 1979, as amended at 48 FR 42805, Sept. 20, 1983]

§ 215.6 Extensions of credit outstanding on March 10, 1979.

(a) Any extension of credit that was outstanding on March 10, 1979, and that would, if made on or after March 10, 1979, violate § 215.4(c) of this part, shall be reduced in amount by March 10, 1980, to be in compliance with the lending limit in § 215.4(c). Any renewal or extension of such an extension of credit on or after March 10, 1979, shall be made only on terms that will bring the extension of credit into compli-

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prohibition also does not apply to the payment by a member bank of an overdraft of a related interest of an executive officer, director, or principal shareholder of the member bank.

[5] Sections 215.5, 215.8 and 215.9 of Regulation O implement section 22(g) of the Federal Reserve Act and do not apply to nonmember banks. For the purposes of these sections, an executive officer of a member bank does not include an executive officer of a bank holding company of which the member bank is a subsidiary or any other subsidiary of that bank holding company.

ance with the lending limit of § 215.4(c) by March 10, 1980. However, any extension of credit made before March 10, 1979, that bears a specific maturity date of March 10, 1980, or later, shall be repaid in accordance with its repayment schedule in existence on or before March 10, 1979.

(b) If a member bank is unable to bring all extensions of credit outstanding on March 10, 1979, into compliance as required by paragraph (a) of this section, the member bank shall promptly report that fact to the Comptroller of the Currency, in the case of a national bank, or to the appropriate Federal Reserve Bank, in the case of a State member bank, and explain the reasons why all the extensions of credit cannot be brought into compliance. The Comptroller or the Reserve Bank, as the case may be, is authorized, on the basis of good cause shown, to extend the March 10, 1980, date for compliance for any extension of credit for not more than two additional one-year periods.

§ 215.7 Records of Member Banks.

Each member bank shall maintain records necessary for compliance with the requirements of this part. These records shall (a) identify all executive officers, directors, and principal shareholders of the member bank and the related intetests of these persons and (b) specify the amount and terms of each extension of credit by the member bank to these persons and to their related interests. Each member bank shall request at least annually that each executive officer, director, or principal shareholder of the member bank identify the related interests of that person.

§ 215.8 Reports by executive officers.

Each executive officer[6] of a member bank who becomes indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in § 215.5(c) of this part, shall, within 10 days of the date the indebtedness reaches such a level, make a written report to the board of directors of the officer's bank. The report shall state the lender's name, the date and amount of each extension of credit, any security for it, and the purposes for which the proceeds have been or are to be used.

[44 FR 12964, Mar. 9, 1979, as amended at 48 FR 42805, Sept. 20, 1983]

§ 215.9 Report on credit to executive officers.

Each member bank shall include with (but not as part of) each report of condition (and copy thereof) filed pursuant to 12 U.S.C. 1817(a)(3) a report of all extensions of credit made by the member bank to its executive officers[7] since the date of the bank's previous report of condition.

[44 FR 12964, Mar. 9, 1979, as amended at 44 FR 67979, Nov. 28, 1979; 48 FR 42805, Sept. 20, 1983]

§ 215.10 Disclosure of credit from member banks to executive officers and principal shareholders.

(a) *Definitions.* For the purposes of this section, the following definitions apply:

(1) *"Principal shareholder of a member bank"* means any person[8] other than an insured bank, or a foreign bank as defined in 12 U.S.C. 3101(7)), that, directly or indirectly, owns, controls, or has power to vote more than 10 percent of any class of voting securities of the member bank. The term includes a person that controls a principal shareholder (e.g., a person that controls a bank holding company). Shares of a bank (including a foreign bank), bank holding company, or other company owned or controlled by a member of an individual's immediate family are presumed to be owned or controlled by the individual for the purposes of determining principal shareholder status.

(2) *"Related interest"* means: (i) Any company controlled by a person, or (ii) any political or campaign committee the funds or services of which will benefit a person or that is controlled by a person.

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[6] [7] See footnote 5 to § 215.5(a).

[8] The term "stockholder of record" appearing in 12 U.S.C. 1972(2)(G) is synonymous with the term "person."

For the purpose of this section and Subpart B, a related interest does not include a bank or a foreign bank (as defined in 12 U.S.C. 3101(7)).

(b) *Public disclosure.* (1) Upon receipt of a written request from the public, a member bank shall make available the names of each of its executive officers[9] and each of its principal shareholders to whom, or to whose related interests, the member bank had outstanding as of the end of the latest previous quarter of the year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus of $500,000, whichever amount is less. No disclosure under this paragraph is required if the aggregate amount of all extensions of credit outstanding at such time from the member bank to the executive officer or principal shareholder of the member bank and to all related interests of such a person does not exceed $25,000.

(2) A member bank is not required to disclose the specific amounts of individual extensions of credit.

(c) *Maintaining records.* Each member bank shall maintain records of all requests for the information described in paragraph (b) of this section and the disposition of such requests. These records may be disposed of after two years from the date of the request.

[48 FR 56936, Dec. 27, 1983; 49 FR 2902, Jan. 24, 1984]

§ 215.11 Civil penalties.

As specified in section 29 of the Federal Reserve Act (12 U.S.C. 504), any member bank, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, that violates any provision of this subpart (other than § 215.10) is subject to a civil penalty of not more than $1,000 per day for each day during which the violation continues.

[44 FR 67979, Nov. 28, 1979]

APPENDIX—SECTION 5200 OF THE REVISED STATUTES TOTAL LOANS AND EXTENSIONS OF CREDIT

(a)(1) The total loans and extensions of credit by a national banking association to a person outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 per centum of the unimpaired capital and unimpaired surplus of the association.

(2) The total loans and extensions of credit by a national banking association to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitations contained in paragraph (1) of this subsection.

DEFINITIONS

(b) For the purposes of this section—

(1) The term "loans and extensions of credit" shall include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person, and to the extent specified by the Comptroller of the Currency, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(2) The term "person" shall include an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government, or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

EXCEPTIONS

(c) The limitations contained in subsection (a) of this section shall be subject to the following exceptions:

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[9] For purposes of this section and Subpart B, an executive officer of a member bank does not include an executive officer of a bank holding company of which the member bank is a subsidiary or of any other subsidiary of that bank holding company unless the executive officer is also an executive officer of the member bank.

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(2) The purchase of bankers' acceptances of the kind described in section 372 of this title and issued by other banks shall not be subject to any limitation based on capital and surplus.

(3) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 35 per centum of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 per centum of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States shall not be subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Comptroller of the Currency, shall not be subject to any limitation based on capital and surplus.

(8)(A) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section.

(B) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(9)(A) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the note covered, shall be subject under this section notwithstanding the collateral requirements set forth in subsection (a)(2) of this section, to a maximum limitation equal to 25 per centum of such capital and surplus.

(B) Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in paragraph (a)(2) of this section, to a limitation of 25 per centum of such capital and surplus.

(10) Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

AUTHORITY OF COMPTROLLER OF THE CURRENCY

(d)(1) The Comptroller of the Currency may prescribe rules and regulations to administer and carry out the purposes of this section, including rules or regulations to define or further define terms used in this section and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit.

(2) The Comptroller of the Currency also shall have authority to determine when a loan putatively made to a person shall for purposes of this section be attributed to another person.

[48 FR 42806, Sept. 20, 1983]

Subpart B—Reports on Indebtedness of Executive Officers and Principal Shareholders to Correspondent Banks

SOURCE: 44 FR 67979, Nov. 28, 1979, unless otherwise noted.

§ 215.20 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)) and 12 U.S.C. 1972(2)(F)(vi).

(b) *Purpose and scope.* This subpart implements the reporting requirements of Title VIII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRA) (Pub. L. 95-630) as amended by the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320), 12 U.S.C. 1972 (2)(g). Title VIII prohibits (1) preferential lending by a bank to executive officers, directors, and principal shareholders of another bank when there is a correspondent account relationship between the banks, and (2) the opening of a correspondent account relationship between banks where there is a preferential extension of credit by one of the banks to an executive officer, director, or principal shareholder of the other bank.

[44 FR 67979, Nov. 28, 1979, as amended at 48 FR 56936, Dec. 27, 1983]

§ 215.21 Definitions.

For the purposes of this subpart, the following definitions apply unless otherwise specified:

(a) "Bank" has the meaning given in 12 U.S.C. 1841(c), and includes a branch or agency of a foreign bank, or a commercial lending company controlled by a foreign bank or by a company that controls a foreign bank, where the branch or agency is maintained in a State of the United States or in the District of Columbia or the commercial lending company is organized under State law.

(b) "Company," "control of a company or bank," "executive officer,"[10] "extension of credit," "immediate family," and "person" have the meanings provided in Subpart A.

(c) "Correspondent account" is an account that is maintained by a bank with another bank for the deposit or placement of funds. A correspondent account does not include:

(1) Time deposits at prevailing market rates, and

(2) An account maintained in the ordinary course of business solely for the purpose of effecting federal funds transactions at prevailing market rates or making Eurodollar placements at prevailing market rates.

(d) "Correspondent bank" means a bank that maintains one or more correspondent accounts for a member bank during a calendar year that in the aggregate exceed an average daily balance during that year of $100,000 or 0.5 per cent of such member bank's total deposits (as reported in its first consolidated report of condition during that calendar year), which ever amount is smaller.

(e) "Principal shareholder" and "related interest" have the meanings provided in § 215.10 of Subpart A.

[44 FR 67979, Nov. 28, 1979, as amended at 48 FR 42805, Sept. 20, 1983]

§ 215.22 Report by executive officers and principal shareholders.

(a) *Annual report.* If during any calendar year an executive officer or principal shareholder of a member bank or a related interest of such a person has outstanding an extension of credit from a correspondent bank of the member bank, the executive officer or principal shareholder shall, on or before January 31 of the following year, make a written report to the board of directors of the member bank.[11]

(b) *Contents of report.* The report required by this section shall include the following information:

(1) The maximum amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests to each of

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[10] For purposes of this section and Subpart B, executive officers of a member bank do not include an executive officer of a bank holding company of which the member bank is a subsidiary or of any other subsidiary of that bank holding company unless, of course, the executive officer is also an executive officer of the member bank.

[11] Persons reporting under this section are not required to include information on extensions of credit that are fully described in a report by a person they control or a person that controls them, provided they identify their relationships with such other person.

the member bank's correspondent banks during the calendar year;

(2) The amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests outstanding to each of the member bank's correspondent banks as of ten business days before the report required by this section is filed;[13] and

(3) A description of the terms and conditions (including the range of interest rates, the original amount and date, maturity date, payment terms, security, if any, and any other unusual terms or conditions) of each extension of credit included in the indebtedness reported under paragraph (b)(1) of this section.

(c) *Definitions.* For the purposes of this section:

(1) "Indebtedness" means an extension of credit, but does not include:

(i) Commercial paper, bonds, and debentures issued in the ordinary course of business; and

(ii) Consumer credit (as defined in 12 CFR 226.2(p)) in an aggregate amount of $5,000 or less from each of the member bank's correspondent banks, provided the indebtedness is incurred under terms that are not more favorable than those offered to the general public.

(2) "Maximum amount of indebtedness" means, at the option of the reporting person, either (i) the highest outstanding indebtedness during the calendar year for which the report is made, or (ii) the highest end of the month indebtedness outstanding during the calendar year for which the report is made.

(d) *Retention of reports at member banks.* The reports required by this section shall be retained at the member bank for a period of three years. The Reserve Bank or the Comptroller, as the case may be, may require these reports to be retained by the bank for an additional period of time. The reports filed under this section are not required by this regulation to be made available to the public and shall not be filed with the Reserve Bank or the Comptroller unless specifically requested.

(e) *Member bank's responsibility.* Each member bank shall advise each of its executive officers and each of its principal shareholders (to the extent known by the bank) of the reports required by this section and make available to each of these persons a list of the names and addresses of the member bank's correspondent banks.

[44 FR 67979, Nov. 28, 1979, as amended at 48 FR 42805, Sept. 20, 1983]

§ 215.23 Disclosure of credit from correspondent banks to executive officers and principal shareholders.

(a) *Public disclosure.* (1) Upon receipt of a written request from the public, a member bank shall make available the names of each of its executive officers and each of its principal shareholders to whom, or to whose related interests, any correspondent bank of the member bank had outstanding, at any time during the previous calendar year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from all correspondent banks of the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or $500,000, whichever amount is less. No disclosure under this paragraph is required if the aggregate amount of all extensions of credit outstanding from all correspondent banks of the member bank to the executive officer or principal shareholder of the member bank and to all related interests of such a person does not exceed $25,000 at any time during the previous calendar year.

(2) A member bank is not required to disclose the specific amounts of individual extensions of credit.

(b) *Maintaining records.* Each member bank shall maintain records of all requests for the information described in paragraph (a) of this section and the disposition of such requests.

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[13] If the amount of indebtedness outstanding to a correspondent bank ten days before the filing of the report is not available or cannot be readily ascertained, an estimate of the amount of indebtedness may be filed with the report, provided that the report is supplemented within the next 30 days with the actual amount of indebtedness.

These records may be disposed of after two years from the date of the request.

[48 FR 56936, Dec. 27, 1983]

PART 216—MINIMUM SECURITY DEVICES AND PROCEDURES FOR FEDERAL RESERVE BANKS AND STATE MEMBER BANKS

Sec.
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APPENDIX A—MINIMUM STANDARDS FOR SECURITY DEVICES
APPENDIX B—PROPER EMPLOYEE CONDUCT DURING AND AFTER A ROBBERY

AUTHORITY: 12 U.S.C. 1881-1884.

SOURCE: Reg. P, 34 FR 615, Jan. 16, 1969, unless otherwise noted.

§ 216.0 Scope of part.

Pursuant to the authority conferred upon the Board of Governors of the Federal Reserve System by section 3 of the Bank Protection Act of 1968 (82 Stat. 295) with respect to State banks which are members of the Federal Reserve System and to Federal Reserve Banks[1] the rules contained in this part—

(a) Establish minimum standards for the installation, maintenance, and operation of security devices and procedures to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts;

(b) Establish time limits for compliance; and

(c) Require the submission of reports.

§ 216.1 Definitions.

For the purposes of this part—

(a) The term "State member bank" means any bank that is a member of the Federal Reserve System (other than a national bank or a District of Columbia bank).

(b) The term "banking hours" means the time during which a banking office is open for the normal transaction of business with the banking public.

(c) The term "banking office" includes the main office of any State member bank and any branch thereof.

(d) The term "branch" includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any territory of the United States, Puerto Rico, Guam, or the Virgin Islands at which deposits are received or checks paid or money lent.

(e) The term "Board" means the Board of Governors of the Federal Reserve System.

(f) The term "teller's station or window" means a location in a banking office at which bank customers routinely conduct transactions with the bank which involve the exchange of funds, including a walkup or drive-in teller's station or window.

§ 216.2 Designation of security officer.

On or before February 15, 1969 (or within 30 days after a State bank becomes a member of the Federal Reserve System, whichever is later), the board of directors of each State member bank shall designate an officer or other employee of the bank who shall be charged, subject to supervision by the bank's board of directors, with responsibility for the installation, maintenance, and operation of security devices and for the development and administration of a security program which equal or exceed the standards prescribed by this part.

§ 216.3 Security devices.

(a) *Installation, maintenance, and operation of appropriate security devices.* Before January 1, 1970 (or within 30 days after a State bank becomes a member of the Federal Reserve System, whichever is later), the security officer of each State member bank, under such directions as shall be given him by the bank's board of directors, shall survey the need for security devices in each of the bank's banking offices and shall provide for the installation, maintenance, and operation, in each such office, of—

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[1] See § 216.7 regarding the applicability of this part to Federal Reserve Banks.

(1) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the banking office;

(2) Tamper-resistant locks on exterior doors and exterior windows designed to be opened;

(3) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary; and

(4) Such other devices as the security officer, after seeking the advice of law enforcement officers, shall determine to be appropriate for discouraging robberies, burglaries, and larcenies and for assisting in the identification and apprehension of persons who commit such acts.

(b) *Considerations relevant to determining appropriateness.* For the purposes of paragraph (a)(4) of this section, considerations relevant to determining appropriateness, include, but are not limited to—

(1) The incidence of crimes against the particular banking office and/or against financial institutions in the area in which the banking office is or will be located;

(2) The amount of currency or other valuables exposed to robbery, burglary, or larceny;

(3) The distance of the banking office from the nearest responsible law enforcement officers and the time required for such law enforcement officers ordinarily to arrive at the banking office;

(4) The cost of the security devices;

(5) Other security measures in effect at the banking office; and

(6) The physical characteristics of the banking office structure and its surroundings.

(c) *Implementation.* It is appropriate for banking offices in areas with a high incidence of crime to install many devices which would not be practicable because of costs for small banking offices in areas substantially free of crimes against financial institutions. Each bank shall consider the appropriateness of installing, maintaining, and operating security devices which are expected to give a general level of bank protection at least equivalent to the standards described in Appendix A of this part. In any case in which (on the basis of the factors listed in paragraph (b) of this section or similar ones, the use of other measures, or the decision that technological change allows the use of other measures judged to give equivalent protection) it is decided not to install, maintain, and operate devices at least equivalent to these standards, the bank shall preserve in its records a statement of the reasons for such decision.

[34 FR 615, Jan. 16, 1969, as amended at 46 FR 15865, Mar. 10, 1981]

§ 216.4 Security procedures.

(a) *Development and administration.* On or before July 15, 1969 (or within 30 days after a State bank becomes a member of the Federal Reserve System, whichever is later), each State member bank shall develop and provide for the administration of a security program to protect each of its banking offices from robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts. This security program shall be reduced to writing, approved by the bank's board of directors, and retained by the bank in such form as will readily permit determination of its adequacy and effectiveness.

(b) *Contents of security programs.* Such security programs shall—

(1) Provide for establishing a schedule for the inspection, testing, and servicing of all security devices installed in each banking office; provide for designating the officer or other employee who shall be responsible for seeing that such devices are inspected, tested, serviced, and kept in good working order; and require such officer or other employee to keep a record of such inspections, testings, and servicings;

(2) Require that each banking office's currency be kept at a reasonable minimum and provide procedures for safely removing excess currency;

(3) Require that the currency at each teller's station or window be kept at a reasonable minimum and provide procedures for safely removing excess currency and other valuables to a locked safe, vault, or other protected place;

(4) Require that the currency at each teller's station or window include "bait" money, i.e., used Federal Reserve notes, the denominations, banks of issue, serial numbers, and series years of which are recorded, verified by a second officer or employee, and kept in a safe place;

(5) Require that all currency, negotiable securities, and similar valuables be kept in a locked vault or safe during nonbusiness hours, that the vault or safe be opened at the latest time practicable before banking hours, and that the vault or safe be locked at the earliest time practicable after banking hours;

(6) Provide where practicable, for designation of a person or persons to open each banking office and require him or them to inspect the premises, to ascertain that no unauthorized persons are present, and to signal other employees that the premises are safe before permitting them to enter;

(7) Provide for designation of a person or persons who will assure that all security devices are turned on and are operating during the periods in which such devices are intended to be used;

(8) Provide for designation of a person or persons to inspect, after the closing hour, all areas of each banking office where currency, negotiable securities, or similar valuables are normally handled or stored in order to assure that such currency, securities, and valuables have been put away, that no unauthorized persons are present in such areas, and that the vault or safe and all doors and windows are securely locked; and

(9) Provide for training, and periodic retraining, of employees in their responsibilities under the security program, including the proper use of security devices and proper employee conduct during and after a robbery, in accordance with the procedures listed in Appendix B of this part.

[34 FR 615, Jan. 16, 1969, as amended at 46 FR 15865, Mar. 10, 1981]

§ 216.5 Reports and records.

(a) *Compliance reports.* As of the last business day in June of 1970, and as of the last business day in June of each calendar year thereafter, each State member bank shall file with the Federal Reserve Bank for the District in which its main office is located a statement certifying to its compliance with the requirements of this part. The statement shall be dated and signed by the president, or cashier, or other managing officer of the bank and may be in a form substantially as follows:

I hereby certify, to the best of my knowledge and belief, that this bank has developed and administers a security program that equals or exceeds the standards prescribed by § 216.4 of Regulation P; that such security program has been reduced to writing, approved by the bank's board of directors, and retained by the bank in such form as will readily permit determination of its adequacy and effectiveness; and that the bank security officer, after seeking the advice of law enforcement officers, has provided for the installation, maintenance, and operation of appropriate security devices, as prescribed by § 216.3 of Regulation P, in each of the bank's banking offices.

(b) *Records of external crime.* After a robbery, burglary or nonemployee larceny is committed or attempted at a banking office of a State member bank, the bank shall keep a record of the incident at its main office. The record may be a copy of a police, insurance or similar report of the incident. Alternatively, the bank may wish to develop its own record indicating the office at which the incident occurred, the type of crime, when the crime occurred and the amount of any loss; whether operational or mechanical deficiencies might have contributed to the crime; and what has been or will be done to correct any deficiencies.

(c) *Special reports.* Each State member bank shall file such other reports as the Board may require.

[34 FR 615, Jan. 16, 1969, as amended at 46 FR 15865, Mar. 10, 1981; 46 FR 49105, Oct. 6, 1981]

§ 216.6 Corrective action.

Whenever the Board determines that the security devices or procedures used by a State member bank are deficient in meeting the requirements of this part, or that the requirements of this part should be varied in the circumstances of a particular banking office, it may take or require the bank to take necessary corrective action. If the Board determines that such corrective action is appropriate or necessary, the bank will be so notified and will be furnished a statement of what the bank must do to comply with the requirements of this part.

§ 216.7 Applicability to Federal Reserve Banks.

The provisions of this part apply to each Federal Reserve Bank and its branches,[2] except that reports and other writings required or permitted to be filed by a State member bank with the Federal Reserve Bank for the District in which it is located must, in the case of a Federal Reserve Bank, be filed with the Board: *Provided, however,* That the applicability of the Bank Protection Act of 1968 and of this part to Federal Reserve Banks and their branches does not preclude the Board from requiring, by virtue of its authority under other provisions of law, that Federal Reserve Banks and their branches comply with higher standards respecting the installation, maintenance, and operation of security devices and procedures than those that are prescribed by this part.

§ 216.8 Penalty provision.

Pursuant to section 5 of the Bank Protection Act of 1968, a State member bank or Federal Reserve Bank that violates any provision of this part shall be subject to a civil penalty not to exceed $100 for each day of the violation.

APPENDIX A—MINIMUM STANDARDS FOR SECURITY DEVICES

In order to assure realization of maximum performance capabilities, all security devices utilized by a bank should be regularly inspected, tested, and serviced by competent persons. Actuating devices for surveillance systems and robbery alarms should be operable with the least risk of detection by unauthorized persons that can be practicably achieved.

(1) *Surveillance systems*—(i) *General.* Surveillance systems should be:

(A) Equipped with one or more photographic, recording, monitoring, or like devices capable of reproducing images of persons in the banking office with sufficient clarity to facilitate (through photographs capable of being enlarged to produce a one-inch vertical head-size of persons whose images have been reproduced) the identification and apprehension of robbers or other suspicious persons;

(B) Reasonably silent in operation; and

(C) So designed and constructed that necessary services, repairs or inspections can readily be made.

Any camera used in such a system should be capable of taking at least one picture every 2 seconds and, if it uses film, should contain enough unexposed film at all times to be capable of operating for not less than 3 minutes, and the film should be at least 16mm.

(ii) *Installation and operation of surveillance systems providing surveillance of other than walk-up or drive-in teller's stations or windows.* Surveillance devices for other than walk-up or drive-in teller's stations or windows should be:

(A) Located so as to reproduce identifiable images of persons either leaving the banking office or in a position to transact business at each such station or window; and

(B) Capable of actuation by initiating devices located at each teller's station or window.

(iii) *Installation and operation of surveillance systems providing surveillance of walk-up or drive-in teller's stations or windows.* Surveillance devices for walk-up or drive-in teller's stations or windows should be located in such a manner as to reproduce identifiable images of persons in a position to transact business at each such station or window and areas of such station or window that are vulnerable to robbery or larceny. Such devices should be capable of actuation by one or more initiating devices located within or in close proximity to such station or window. Such devices may be omitted in the case of a walk-up or drive-in teller's station or window in which the teller is effectively protected by a bullet-resistant barrier from persons outside the station or window. However, if the teller is vulnerable to larceny or robbery by members of the public who enter the banking office, the teller should have access to a device to actuate a surveillance system that covers the area of vulnerability or the exits to the banking office.

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[2] A branch of a Federal Reserve Bank means an office established pursuant to section 3 of the Federal Reserve Act (12 U.S.C. 521).

(2) *Robbery and burglary alarm systems*—(i) *Robbery alarm systems.* A robbery alarm system should be provided for each banking office at which the police ordinarily can arrive within 5 minutes after an alarm is actuated; all other banking offices should be provided with appropriate devices for promptly notifying the police that a robbery has occurred or is in progress. Robbery alarm systems should be:

(A) Designed to transmit to the police, either directly or through an intermediary, a signal (not detectable by unauthorized persons) indicating that a crime against the banking office has occurred or is in progress;

(B) Capable of actuation by initiating devices located at each teller's station or window (except walk-up or drive-in teller's stations or windows in which the teller is effectively protected by a bullet-resistant barrier and effectively isolated from persons, other than fellow employees, inside a banking office of which such station or window may be a part);

(C) Safeguarded against accidental transmission of an alarm;

(D) Equipped with a visual and audible signal capable of indicating improper functioning of or tampering with the system; and

(E) Equipped with an independent source of power (such as a battery) sufficient to assure continuously reliable operation of the system for at least 24 hours in the event of failure of the usual source of power.

(ii) *Burglary alarm systems.* A burglary alarm system should be provided for each banking office. Burglary alarm systems should be:

(A) Capable of detecting promptly an attack on the outer door, walls, floor, or ceiling of each vault, and each safe not stored in a vault, in which currency, negotiable securities, or similar valuables are stored when the office is closed, and any attempt to move any such safe;

(B) Designed to transmit to the police, either directly or through an intermediary, a signal indicating that any such attempt is in progress; and for banking offices at which the police ordinarily cannot arrive within 5 minutes after an alarm is actuated, designed to actuate a loud sounding bell or other device that is audible inside the banking office and for a distance of approximately 500 feet outside the banking office;

(C) Safeguarded against accidental transmission of an alarm;

(D) Equipped with a visual and audible signal capable of indicating improper functioning of or tampering with the system; and

(E) Equipped with an independent source of power (such as a battery) sufficient to assure continuously reliable operation of the system for at least 80 hours in the event of failure of the usual source of power.

(3) *Walk-up and drive-in teller's stations or windows.* Walk-up and drive-in teller's stations or windows contracted for after February 15, 1969, should be constructed in such a manner that tellers are effectively protected by bullet-resistant barriers from robbery or larceny by persons outside such stations or windows. Such barriers should be of glass at least $1\frac{3}{16}$ inches in thickness,[1] or of material of at least equivalent bullet-resistance. Pass-through devices should be so designed and constructed as not to afford a person outside the station or window a direct line of fire at a person inside the station.

(4) *Vaults, safes, safedeposit boxes, night depositories, and automated paying or receiving machines.* Vaults, safes (if not to be stored in a vault), safe deposit boxes, night depositories, and automated paying or receiving machines, in any of which currency, negotiable securities, or similar valuables are to be stored when banking offices are closed, should meet or exceed the standards expressed in this section.

(i) *Vaults.* A vault is defined as a room or compartment that is designed for the storage and safekeeping of valuables and which has a size and shape which permits enterance and movement within by one or more persons. Other asset storage units which do not meet this definition of a vault will be considered as safes. Vaults contracted for after November 1, 1973,[2] should have walls, floor, and ceiling of reinforced concrete at least 12 inches in thickness.[3] The vault door

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[1] It should be emphasized that this thickness is merely bullet-resistant and not bullet-proof.

[2] Vaults contracted for previous to this date should be constucted in conformance with all applicable specifications then in effect.

[3] The reinforced concrete should have: Two grids of 5 ($\frac{5}{8}$" diameter) deformed steel bars located in horizontal and vertical rows in each direction to form grids not more than 4 inches on center; or two grids of expanded steel bank vault mesh placed parallel to the face of the walls, weighing at least 6 pounds per square foot to each grid, having a diamond pattern nor more than 3"x 8"; or two grids of any other fabricated steel placed parallel to the face of the walls,

Continued

should be made of steel at least 3½ inches in thickness, or other drill and torch resistant material, and be equipped with a dial combination lock, a time lock, and a substantial lockable day-gate. Electrical conduits into the vault should not exceed 1½ inches in diameter and should be offset within the walls, floor, or ceiling at least once so as not to form a direct path of entry. A vault ventilator, if provided, should be designed with consideration of safety to life without significant reduction of the strength of the vault wall to burglary attack. Alternatively, vaults should be so designed and constructed as to afford at least equivalent burglary resistance.[4]

(ii) *Safes.* Safes contracted for after February 15, 1969, should weigh at least 750 pounds empty, or be securely anchored to the premises where located. The body should consist of steel, at least 1 inch in thickness, either cast or fabricated, with an ultimate tensile strength of 50,000 pounds per square inch and be fastened in a manner equal to a continuous ¼ inch penetration weld having an ultimate tensile strength of 50,000 pounds per square inch. The door should be made of steel that is at least 1½ inch in thickness, and at least equivalent in strength to that specified for the body; and the door should be equipped with a combination lock, or time lock, and with a relocking device that will effectively lock the door if the combination lock or time lock is punched. One hole not exceeding ½ inch diameter may be provided in the body to permit insertion of electrical conductors, but should be located so as not to permit a direct view of the door or locking mechanism. Alternatively, safes should be constructed of materials that will afford at least equivalent burglary resistance.

(iii) *Safe deposit boxes.* Safe deposit boxes used to safeguard customer valuables should be enclosed in a vault or safe meeting at least the above-specified minimum protection standards.

(iv) *Night depositories.* Night depositories (excluding envelope drops not used to receive substantial amounts of currency) contracted for after February 15, 1969, should consist of a receptacle chest having cast or welded steel walls, top, and bottom, at least 1 inch in thickness; a steel door at least 1½ inches in thickness, with a combination lock; and a chute, made of steel that is at least 1 inch in thickness, securely bolted or welded to the receptacle and to a depository enterance of strength similar to the chute. Alternatively, night depositories should be so designed and constructed as to afford at least equivalent burglary resistance.[5] Each depository entrance (other than an envelope drop slot) should be equipped with a lock. Night depositories should be equipped with a burglar alarm and be designed to protect against the "fishing" of a deposit from the deposit receptacle, and to protect against the "trapping" of a deposit for extraction.

(v) *Automated paying or receiving machines.* Except as hereinafter provided, cash dispensing machines (automated paying machines), including those machines which also accept deposits (automated receiving machines) contracted for after November 1, 1973, should weigh at least 750 pounds empty, or be securely anchored to the premises where located. Cash dispensing machines should contain, among other features, a storage chest having cast or welded steel walls, top and bottom, at least 1 inch in thickness, with a tensile strength of at least 50,000 pounds per square inch. Any doors should be constructed of steel at least equivalent in strength to the storage chest and be equipped with a combination lock and with a relocking device that will effectively lock the door if the combination lock is punched. The housing covering the cash dispensing opening in the storage chest and the housing covering the mechanism for removing the cash from the storage chest, should be so designed as to provide burglary resistance at least equivalent to the storage chest and should also be designed to protect against the "fishing" of cash from the storage chest. The cash dispensing control and delivering mechanism (and, when applicable, cash deposit receipt mechanism) should be protected by steel, at least ½ inch in

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weighing at least 6 pounds per square foot to each grid and having an open area not exceeding 4 inches on center. Grids are to be located not less than 6 inches apart and staggered in each direction. The concrete should develop an ultimate compression strength of at least 3,000 pounds per square inch.

[4] Equivalent burglary-resistant materials for vaults do *not* include the use of a steel lining, either inside or outside a vault wall, in lieu of the specified reinforcement and thickness of concrete. Nonetheless, there may be instances, particulary where the construction of a vault of the specified reinformcement and thickness of concrete would require substantial structural modification of an existing building, where compliance with the specified standards would be unreasonable in cost. In those instances, the bank should comply with the procedure set forth in § 216.3(c) of Regulation P.

[5] Equivalent burglary-resistant materials for night depositories include the use of one-fourth inch steel plate encased in 6 inches or more of concrete or masonry building wall.

thickness, securely attached to the storage chest. A cash dispensing machine which also receives deposits should have a receptacle chest having the same burglary resistant characteristics as that of cash dispensing storage chest and should be designed to protect against the fishing and trapping of deposits. Necessary ventilation for the automated machines should be designed so as to avoid significantly reducing the burglary resistance of the machines. The cash dispensing machine should also be designed so as to be protected against actuation by unauthorized persons, should be protected by a burglar alarm, and should be located in a well-lighted area. Alternatively, cash dispensing machines should be so designed and constructed as to afford at least equivalent burglary resistance.[6] A cash dispensing machine which is used inside a bank's premises only during bank business hours, and which is empty of currency and coin at all other times, should at least provide safeguards against "jimmying," unauthorized opening of the storage chest door, and against actuation by unauthorized persons.

[38 FR 27831, Oct. 9, 1973]

APPENDIX B—PROPER EMPLOYEE CONDUCT DURING AND AFTER A ROBBERY

With respect to proper employee conduct during and after a robbery, employees should be instructed:

(1) To avoid actions that might increase danger to themselves or others;

(2) To activate the robbery alarm system and the surveillance system during the robbery, if it appears that such activation can be accomplished safely;

(3) To observe the robber's physical features, voice, accent, mannerisms, dress, the kind of weapon he has, and any other characteristics that would be useful for identification purposes;

(4) That if the robber leaves evidence (such as a note) try to put it aside and out of sight, if it appears that this can be done safely; retain the evidence, do not handle it unnecessarily, and give it to the police when they arrive; and refrain from touching, and assist in preventing others from touching, articles or places the robber may have touched or evidence he may have left, in order that fingerprints of the robber may be obtained;

(5) To give the robber no more money than the amount he demands, and include "bait" money in the amount given;

(6) That if it can be done safely, observe the direction of the robber's escape and the description and license plate number of the vehicle used, if any;

(7) To telephone the local police, if they have not arrived, and the nearest office of the Federal Bureau of Investigation, or inform a designated officer or other employee who has this responsibility, that a robbery has been committed;

(8) That if the robber leaves before the police arrive, assure that a designated officer or other employee waits outside the office, if it is safe to do so, to inform the police when they arrive that the robber has left;

(9) To attempt to determine the names and addresses of other persons who witnessed the robbery or the escape, and request them to record their observations or to assist a designated officer or other employee in so doing;

(10) To refrain from discussing the details of the robbery with others before recording the observations respecting the robber's physical features and other characteristics as hereinabove described and the direction of escape and description of vehicle used, if any.

PART 217—INTEREST ON DEPOSITS

REGULATIONS

Sec.

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[6] Equivalent burglary-resistant materials for cash dispensing machines include the use of ⅝ inch thick nickel stainless steel meeting American Society of Testing Materials (ASTM) Designation A 167-70, Type 304, in place of 1 inch thick steel, if other criteria are satisfied.

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Sec.
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AUTHORITY: 12 U.S.C. 248, 371, 371a, 371b, 461, 1828, unless otherwise noted.

REGULATIONS

§ 217.0 Scope of part.

(a) This regulation is issued under authority of provisions of section 19 of the Federal Reserve Act which, together with related provisions of law, are cited in the note preceding this section.

(b) This part relates to the payment of deposits and interest thereon by member banks of the Federal Reserve System and not to the computation and maintenance of the reserves which member banks are required to maintain against deposits. The rules concerning reserves of member banks are contained in Part 204 of this chapter.

(c) Under authority of the provisions of section 7 of the International Banking Act of 1978 (12 U.S.C. 3105), the provisions of this part apply to a Federal branch or agency of a foreign bank and to a State uninsured branch or agency of a foreign bank in the same manner and to the same extent as if the branch or agency were a member bank, except as may be otherwise provided by the Board, if (1) its parent foreign bank has total worldwide consolidated bank assets in excess of $1 billion; (ii) its parent foreign bank is controlled by a foreign company which owns or controls foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1 billion; or (iii) its parent foreign bank is controlled by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1 billion.

(d) The provisions of this part do not apply to any deposit that is payable only at an office located outside of the States of the United States and the District of Columbia of a member bank or of a foreign bank.

[Reg. Q, effective Jan. 1, 1936, as amended at 45 FR 19221, Mar. 25, 1980]

§ 217.1 Definitions.

For purposes of this part, the following definitions apply unless otherwise specified:

(a) *Demand deposit.* The term "any deposit which is payable on demand," hereinafter referred to as a "demand deposit," includes every deposit that is not a "time deposit," "international banking facility time deposit," or "savings deposit," as defined in this section.

(b)(1) *"Time deposit"* means (i) a deposit that the depositor does not have a right to withdraw for a period of seven days or more after the date of deposit. "Time deposit" includes funds:

(A) Payable on a specified date not less than seven days after the date of deposit;

(B) Payable at the expiration of a specified time not less than seven days after the date of deposit;

(C) Payable upon written notice which actually is required to be given by the depositor not less than seven days before the date of repayment;[1] or

(D) Such as "Christmas club" accounts and "vacation club" accounts, that are deposited under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than seven days from the end of the period; and

(ii) An "international banking facility time deposit."

(2) A time deposit may be represented by a transferable or nontransferable, or a negotiable or nonnegotiable, certificate, instrument, passbook, statement or otherwise. A time deposit evidenced by a certificate or instrument is payable only upon presentation of the certificate or instrument. A time deposit established in statement, book-entry, or other form must be evidenced by a written agreement and deposits must be confirmed by issuance of a receipt or advice.

(c)-(d) [Reserved]

(e) "Savings deposit" means a deposit—(1) that consists of funds deposited to the credit of or in which the entire beneficial interest is held by one or more individuals, or of a corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes and not operated for profit;[2] or that consists of funds deposited to the credit of or in which the entire beneficial interest is held by the United States, any State of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or political subdivision thereof; or that consists of funds deposited to the credit of, or in which any beneficial interest is held by a corporation, association, or other organization not qualifying above to the extent such funds do not exceed

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[1] A deposit with respect to which the bank merely reserves the right to require notice of not less than seven days before any withdrawal is made is not a "time deposit" within the meaning of the above definition.

[2] Deposits in joint accounts of two or more individuals may be classified as savings deposits if they meet the other requirements of the above definition. Deposits of a partnership operated for profit may also be classified as savings to the extent such deposits to not exceed $150,000 per partnership at a member bank.

$150,000 per such depositor at a member bank; and

(2) With respect to which the depositor is not required by the deposit contract but may at any time be required by the bank to give written notice of an intended withdrawal not less than seven days before such withdrawal is made,[3] and that is not payable on a specified date or at the expiration of a specified time after the date of deposit.

(3) (i) Deposits subject to negotiable orders of withdrawal may be maintained if such deposits consist of funds in which the entire beneficial interest is held by (A) one or more individuals; (B) a corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes and not operated for profit; or (C) the United States, any State of the United States, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

(ii) Deposits in which any beneficial interest is held by a corporation, partnership, association, or other organization that is operated for profit or is not operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes, or that is not a governmental unit described in paragraph (e)(3)(i)(C) may not be classified as deposits subject to negotiable orders of withdrawal, except as authorized by § 217.7(g).

(4) *"Savings deposit"* also means a deposit issued pursuant to § 217.7(c)(2)(ii) or § 217.7(g) with respect to which the member bank reserves the right to require at least seven days' notice prior to withdrawal or transfer.

(f) *Deposits as including certain promissory notes and other obligations.* For the purposes of this part, the term "deposits" also includes any member bank's liability on any promissory note, acknowledgment of advance, due bill, or similar obligation (written or oral) that is issued or undertaken by a member bank principally as a means of obtaining funds to be used in its banking business, except any such obligation that:

(1) Is issued to (or undertaken with respect to) and held for the account of (i) a bank or an institution the time deposits of which are exempt from § 217.7 pursuant to § 217.3(g), or (ii) the United States or an agency thereof, or the Government Development Bank for Puerto Rico;

(2) Evidences an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase;

(3) (i) Bears on its face, in bold-face type, the following:

> This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation;

is subordinated to the claims of depositors, is unsecured, and is ineligible as collateral for a loan by the issuing bank and also expressly states said provisions on its face; has an original maturity of at least seven years, or, in the case of an obligation or issue that provides for any type of scheduled repayments of principal, has an average maturity[4] of at least seven years[5] and provides that once any such repayment of principal begins, all scheduled repayments shall be made at least annually and the amount repaid in each year is no less than in the prior year; is issued subject to a requirement that no repayment (other than a regularly scheduled repayment already approved by the appropriate Federal bank regulatory agency), including but not limited to a payment pursuant to acceleration of maturity, may be made without the prior written approval of the appropriate Federal bank regulatory agency;[6] is in an amount of at least $500, *Except*, That the appropriate Federal bank regulatory agency may approve the issuance of an obligation that is less than $500 if such lesser amount is necessary (*a*) to satisfy the preemptive rights of shareholders in the case of a convertible debt obligation, (*b*) to maintain a ratable unit offering to holders of preemptive rights in the case of an obligation issued exclusively as part of a unit including shares of stock which are subject to such preemptive rights, or (*c*) to satisfy shareholders' ratable claims in the case of an obligation issued wholly or partially in exchange for shares of voting stock or assets pursuant to a plan of merger, consolidation, reorganization, or other transaction where the issuer will acquire either a majority of such shares of voting stock or all or substantially all of the assets of the entity whose assets are being acquired; and has been approved by the appropriate Federal bank regulatory agency as an addition to the capital structure of the issuing bank; or (ii) meets all of the requirements in the preceding clause except the maturity requirement or the requirement that scheduled repayments shall be in amounts at least equal to those made in a previous year; and with respect to which the appropriate Federal bank regulatory agency has determined that exigent circumstances require the issuance of such obligations without regard to the provisions of this part; or (iii) was issued or publicly offered before June 30, 1970, with an original maturity of more than two years; or

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[3] The exercise by the bank of its right to require such notice shall not cause the deposit to cease to be a savings deposit.

[4] The "average maturity" of an obligation or issue repayable in scheduled periodic payments shall be the weighted average of the maturities of all such scheduled repayments.

[5] In a serial issue, the member bank may offer no note with a maturity of less than five years.

(4) Arises from a borrowing by a member bank from a dealer in securities for 1 business day, of proceeds of a transfer of deposit credit in a Federal Reserve Bank (or other immediately available funds), commonly referred to as "Federal funds", received by such dealer on the date of the loan in connection with clearance of securities transactions.

This paragraph shall not, however, affect (i) any instrument issued before June 27, 1966, or (ii) any instrument that evidences an indebtedness arising from a transfer of assets under repurchase agreement issued before July 25, 1969.

(g) *Multiple maturity time deposit.* The term "multiple maturity time deposit" means any time deposit (1) that is payable at the depositor's option on more than one date, whether on a specified date or at the expiration of a specified time after the date of deposit (e.g., a deposit payable at the option of the depositor either 3 months or 6 months after the date of deposit), (2) that is payable after written notice of withdrawal, or (3) with respect to which the underlying instrument or contract or any informal understanding or agreement provides for automatic renewal at maturity.

(h) *Obligations issued by the parent bank holding company of a member bank.* (1) For purposes of this part, the "deposits" of a member bank also includes an obligation that is (i) required to be registered with the Securities and Exchange Commission under the Securities Act of 1933; (ii) issued or guaranteed in whole or in part as to principal and interest by the member bank's parent which is a bank holding company under the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841-1850), regardless of the use of proceeds; and (iii) issued in a denomination of less than $100,000 and with a stated maturity, notice period or redemption period of less than seven days.

(2) The term "deposits" does not include those obligations of a bank holding company that are subject to interest rate limitations imposed pursuant to Pub. L. 89-597.

(i) *Credit balances.* For purposes of this part, the term "deposits" also includes the credit balances of a United States branch or agency of a foreign bank.

(j) *Foreign bank.* "Foreign bank" means any bank organized under the laws of any country other than the United States (including its States and the District of Columbia), or organized under the laws of Puerto Rico, Guam, American Samoa, the Virgin Islands, or a territory of the United States.

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[6] For the purposes of this part, the "appropriate Federal bank regulatory agency" is the Comptroller of the Currency in the case of a national bank and the Board of Governors in the case of a State member bank.

(k) "Any deposit that is payable only at an office located outside of the States of the United States and the District of Columbia" means (1) a deposit of a U.S. resident [4a] (as defined in 12 CFR 204.2(s)) that is in a denomination of $100,000 or more, and as to which the depositor is entitled under the agreement with the institution, to demand payment only outside the States of the United States or the District of Columbia or (2) a deposit of a person who is not a United States resident [4a] as to which the depositor is entitled under the agreement with the institution to demand payment, only outside the States of the United States or the District of Columbia.

(l) "*International banking facility time deposit*" or "*IBF time deposit*" means a deposit, placement, borrowing or similar obligation represented by a promissory note, acknowledgment of advance, or similar instrument that is not issued in negotiable or bearer form, and

(1)(i) That must remain on deposit at the IBF at least overnight; and

(ii) That is issued to

(A) Any office located outside the United States of another depository institution organized under the laws of the United States or of an Edge or Agreement Corporation;

(B) Any office located outside the United States of a foreign bank;

(C) A United States office or a non-United States office of the entity establishing the IBF;

(D) Another IBF; or

(E) An institution whose time deposits are exempt from interest rate limitations under § 217.3(g); or

(2)(i) That is payable

(A) On a specified date not less than two business days after the date of deposit;

(B) Upon expiration of a specified period of time not less than two business days after the date of deposit; or

(C) Upon written notice that actually is required to be given by the depositor not less than two business days prior to the date of withdrawal;

(ii) That represents funds deposited to the credit of a non-United States resident or a foreign branch, office, subsidiary, affiliate, or other foreign establishment ("foreign affiliate") controlled by one or more domestic corporations provided that such funds are used only to support the operations outside the United States of the depositor or of its affiliates located outside the United States; and

(iii) That is maintained under an agreement or arrangement under which no deposit or withdrawal of less than $100,000 is permitted, except that a withdrawal of less than $100,000 is permitted, if such withdrawal closes an account.

(Sec. 19(a), Federal Reserve Act (12 U.S.C. 461(a)))

[Reg. Q, effective Jan. 1, 1936]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 217.1 see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 217.2 Demand deposits.

(a) *Interest prohibited.* Except as provided by section 19 of the Federal Reserve Act, no member bank of the Federal Reserve System shall, directly or indirectly, by any device whatsoever, pay any interest on any demand deposit.

(b) *Meaning of interest.* Within this part, any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit shall be considered interest.

[Reg. Q, 31 FR 16311, Dec. 21, 1966]

§ 217.3 Interest on time and savings deposit.

(a) *Maximum rate.* Except as provided in this section, no member bank shall, directly or indirectly, by any device whatsoever, pay interest on any time or savings deposit at a rate in excess of such applicable maximum rate as the Board of Governors of the Federal Reserve System shall prescribe from time to time in § 217.7. The effects of compounding of interest may be disregarded in ascertaining the rate of interest paid. The maximum rate of interest that may be paid by a member bank on an additional deposit to any existing time deposit shall not exceed the maximum rate that may be paid in accordance with § 217.7 on the date the additional deposit is made.

[4a] A deposit of a foreign branch, office, subsidiary, affiliate or other foreign establishment ("foreign affiliate") controlled by one or more domestic corporations is not regarded as a deposit of a United States resident if the funds serve a purpose in connection with its foreign or international business or that of other foreign affiliates of the controlling domestic corporation(s).

(b) *Modification of contracts to conform to regulation.* No certificate of deposit or other contract shall be renewed or extended unless it be modified to conform to the provisions of this part, and every member bank shall take such action as may be necessary, as soon as possible consistently with its contractual obligations, to bring all of its outstanding certificates of deposit or other contracts into conformity with the provisions of this part.

(c) *Member banks limited to maximum rate for State banks.* The rate of interest paid by a member bank upon a time deposit or savings deposit shall not in any case exceed (1) the applicable maximum rate prescribed pursuant to the provisions of paragraph (a) of this section, or (2) the applicable maximum rate authorized by law to be paid upon such deposits by State banks or trust companies organized under the laws of the State in which such member bank is located, whichever may be less.

(d) *Grace periods in computing interest on savings deposits.* A member bank may pay interest on a savings deposit received during the first 10 calendar days of any calendar month at the applicable maximum rate prescribed pursuant to paragraph (a) of this section calculated from the first day of such calendar month until such deposit is withdrawn or ceases to constitute a savings deposit under the provisions of this part, whichever shall first occur; and a member bank may pay interest on a savings deposit withdrawn during its last 3 business days of any calendar month ending a regular quarterly or semiannual interest period at the applicable maximum rate prescribed pursuant to paragraph (a) of this section calculated to the end of such calendar month.

(e) *Computation of interest.* In the computation of simple daily interest, the time factor should be expressed as a fraction in which the actual number of days the funds earn interest is the numerator, and the denominator is either 360, 365, or, in a leap year, 366. However, when a deposit matures in 1 month (or multiples thereof), the bank may use 30 days in the numerator (or corresponding multiples thereof).

(f) *No interest after maturity or expiration of notice.* After the date of maturity of any time deposit, such deposit is a demand deposit, and no interest may be paid on such deposit for any period subsequent to such date. After the expiration of the period of notice given with respect to the repayment of any time deposit or savings deposit, such deposit is a demand deposit and no interest may be paid on such deposit for any period subsequent to the expiration of such notice, except that, if the owner of such deposit advises the bank in writing that the deposit will not be withdrawn pursuant to such notice or that the deposit will thereafter again be subject to the contract or requirements applicable to such deposit, the deposit will again constitute a time deposit or savings deposit, as the case may be, after the date upon which such advice is received by the bank. On each certificate, passbook, or other document representing a time deposit, the bank shall have printed or stamped a conspicuous statement indicating that no interest will be paid on the deposit after the maturity date or, in the case of a time deposit that is automatically renewable, a conspicuous statement indicating that the contract will be renewed automatically upon maturity, and indicating the terms of such renewal, *Provided,* however, That a member bank may provide in any time deposit contract that if the deposit, or any portion thereof, is withdrawn not more than seven calendar days after a maturity date (one business day for deposits authorized by § 217.7(e)), interest will be paid thereon at the originally specified contract rate. A member bank may specify in the time deposit contract that interest will be paid at any other lower rate. However, in no event may the rate specified be less than the current rate paid on savings deposits by the member bank.

(g) *Time deposits of foreign governmental entities and international organizations.* Section 217.7 does not apply to the rate of interest that may be paid by a member bank on a time deposit having a maturity of 2 years or less and representing funds deposited and owned by (1) a foreign national government, or an agency or instrumentality thereof[9] engaged principally in activities which are ordinarily performed in the United States by governmental entities, (2) an international entity of which the United States is a member, or (3) any other foreign, international, or supranational entity specifically designated by the Board as exempt from § 217.7. All certificates of deposit issued by member banks to such entities on which the contract rate of interest exceeds the maximum prescribed under § 217.7 shall provide that (i) in the event of transer, the date of transfer, attested to in writing by the transferor, shall appear on the certificate, and (ii) the maximum rate limitations of § 217.7 in effect at the date of issuance of the certificate shall apply to the certificate for any period during which it is held by a person other than an entity exempt therefrom under the foregoing sentence.[10] Upon the presentment of such a certificate for payment, the bank may pay the holder the contract rate of interest on the deposit for the time that the certificate was actually owned by an entity so exempt.

(12 U.S.C. 364)

[Reg. Q, effective Jan. 1, 1936, as amended at 24 FR 7062, Sept. 1, 1959; 33 FR 15408, Oct. 17, 1968; 34 FR 9702, June 21, 1969; 35 FR 878, Jan. 22, 1970; 35 FR 19662, Dec. 29, 1970; 46 FR 62398, Dec. 24, 1981; 47 FR 39658, Sept. 9, 1982; 48 FR 45756, Oct. 7, 1983]

§ 217.4 Payment of time deposits before maturity.

(a) *Time deposits payable on a specified date.* No member bank shall pay any time deposit, which is payable on a specified date, before such specified date, except as provided in paragraph (d) of this section.

(b) *Time deposits payable after a specified period.* No member bank shall pay any time deposit, which is payable at the expiration of a certain specified period, before such specified period has expired, except as provided in paragraph (d) of this section.

(c) *Time deposits payable after a specified notice.* No member bank shall pay any time deposit, with respect to which notice is required to be given a certain specified period before any withdrawal is made, until such required notice has been given and the specified period thereafter has expired, except as provided in paragraph (d) of this section.

(d) *Penalty for early withdrawals.* (1)(i) For time deposit contracts entered into before July 1, 1979, that have not been renewed or extended on or after July 1, 1979, the following minimum early withdrawal penalty shall apply. Where a time deposit, or any portion thereof, is paid before maturity, a member bank may pay interest on the amount withdrawn at a rate not to exceed that prescribed in § 217.7 for a savings deposit and, in addition, the depositor shall forfeit three months of interest payable at such rate. If, however, the amount withdrawn has remained on deposit for three months or less, all interest shall be forfeited.

(ii) For time deposit contracts entered into, renewed, or extended on or after July 1, 1979, but prior to June 2, 1980, that have not been renewed or extended on or after June 2, 1980, the following minimum early withdrawal penalty shall apply:

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[9] Other than States, provinces, municipalities, or other regional or local governmental units, or agencies or instrumentalities thereof.

[10] A new certificate not maturing prior to the maturity date of the original certificate may be issued by the member bank to the transferee, in which event the original must be retained by the bank. The new certificate may not provide for interest after the date of transfer at a rate in excess of the applicable maximum rate authorized by § 217.7 as of the date of issuance of the original certificate.

(A) Where a time deposit with an original maturity or required notice period of one year or less, or any portion thereof, is paid before maturity or before the expiration of the required notice period, a depositor shall forfeit at least three months of interest on the amount withdrawn at the rate being paid on the deposit. If the amount withdrawn has remained on deposit for less than three months, all interest on the amount withdrawn shall be forfeited.

(B) Where a time deposit with an original maturity or required notice period of more than one year, or any portion thereof, is paid before maturity or before the expiration of the required notice period, a depositor shall forfeit at least six months of interest on the amount withdrawn at the rate being paid on the deposit. If the amount has remained on deposit for less than six months, all interest on the amount withdrawn shall be forfeited. (The provisions of this paragraph (d)(1)(ii) may be applied, with the consent of the depositor, to time deposits specified in paragraph (d)(1)(vi) of this section.)

(iii) The following minimum early withdrawal penalty shall apply to time deposit contracts entered into, renewed, or extended between June 2, 1980, and September 30, 1983, and that have not been renewed or extended on or after October 1, 1983:

(A) Where a time deposit with an original maturity or required notice period of less than three months, or any portion thereof, is paid before maturity, a depositor shall forfeit an amount at least equal to the amount of interest that could have been earned on the amount withdrawn at the nominal (simple interest) rate being paid on the deposit had the funds remained on deposit until maturity.

(B) Where a time deposit with an original maturity or required notice period of three months or more to one year, or any portion thereof, is paid before maturity, a depositor shall forfeit an amount at least equal to three months of interest earned, or that could have been earned, on the amount withdrawn at the nominal (simple interest) rate being paid on the deposit, regardless of the length of time the funds withdrawn have remained on deposit.

(C) Where a time deposit with an original maturity or required notice period of more than one year, or any portion thereof, is paid before maturity, a depositor shall forfeit an amount at least equal to six months of interest earned, or that could have been earned, on the amount withdrawn at the nominal (simple interest) rate being paid on the deposit, regardless of the length of time the funds withdrawn have remained on deposit.

(iv) The following minimum early withdrawal penalty shall apply to time deposit contracts entered into, renewed, or extended on or after October 1, 1983:

(A) Where a time deposit with an original maturity or required notice period of seven to 31 days, or any portion thereof, is paid before maturity, a depositor shall forfeit an amount at least equal to the greater of (*1*) all interest earned on the amount withdrawn from the most recent of the date of deposit, date of maturity, or date on which notice of withdrawal was given, or (*2*) all interest that could have been earned on the amount withdrawn during a period equal to one-half the maturity period or the required notice period.

(B) Where a time deposit with an original maturity or required notice period of 32 days to one year, or any portion thereof, is paid before maturity, a depositor shall forfeit an amount at least equal to one month's interest earned, or that could have been earned, on the amount withdrawn at the nominal (simple interest) rate being paid on the deposit, regardless of the length of time the funds withdrawn have remained on deposit.

(C) Where a time deposit with an original maturity or required notice period of more than one year, or any portion thereof, is paid before maturity, the depositor shall forfeit an amount at least equal to three months' interest earned, or that could have been earned, on the amount withdrawn at the nominal (simple) interest rate being paid on the deposit, regardless of the length of time the funds withdrawn have remained on deposit.

(2) Notwithstanding the provisions of paragraph (d)(1), where a time deposit, or any portion thereof, maintained in an Individual Retirement Account established in accordance with 26 U.S.C. 408 is paid before maturity within seven days after the establishment of the Individual Retirement Account pursuant to the provisions of 26 CFR 1.408-(1)(d)(4), or where a time deposit, or any portion thereof, maintained in a Keogh (H.R. 10) Plan account established in accordance with 26 U.S.C. 401 is paid before maturity within seven days after the establishment of the Keogh (H.R. 10) Plan, a depositor shall forfeit an amount at least equal to the interest earned on the amount withdrawn at the nominal (simple interest) rate being paid on the deposit.

(3) A member bank, with the depositor's consent, may compute the minimum penalty required to be imposed on withdrawals from time deposits opened prior to June 2, 1980, on the basis of the nominal (simple interest) rate.

(4) Where necessary to comply with the requirements of this paragraph, any interest already paid to or for the account of the depositor shall be deducted from the amount requested to be withdrawn.

(5) Any amendment of a time deposit contract that results in an increase in the rate of interest paid, except for time deposits on which no maximum interest rate limitation is prescribed, or any amendment of a time deposit contract that results in a reduction in the maturity of the deposit constitute payment of a time deposit before maturity.

(6) For purposes of computing the penalty required to be imposed under this paragraph, under a time deposit agreement that provides that subsequent deposits reset the maturity of the entire account, each deposit, maintained in the account for at least a period equal to the original maturity of the deposit may be regarded as having matured individually and been redeposited at intervals equal to such period. Except as provided in paragraph (d)(1)(iv)(A), when a time deposit is payable only after notice, for funds on deposit for at least the notice period, the penalty for early withdrawal shall be imposed for at least the notice period.

(7) A member bank may permit a depositor to withdraw interest credited to a time deposit during any term at any time during such term without penalty. If the deposit or account is automatically renewed on the same terms (including at the same rate of interest), interest credited during the preceding term or terms as well as the renewal term may be paid at any time during the renewal term without penalty, unless the deposit agreement specifically provides otherwise. If the rate of interest paid during the renewal term or the maturity period of the renewal term is different, interest in the account at the commencement of the renewal term shall be treated as principal, and only interest for the renewal term may be paid at any time without penalty during such term.

(8) A time deposit, or a portion thereof, may be paid before maturity without a forfeiture of interest as prescribed by this paragraph in the following circumstances:

(i) Where a member bank pays all or a portion of a time deposit representing funds contributed to an Individual Retirement Account or a Keogh (H.R. 10) Plan established pursuant to 26 U.S.C. (IRC 1954) 408, 401 when the individual for whose benefit the account is maintained attains age 59½ or is disabled (as defined in 26 U.S.C. (IRC 1954) 72(m)(7)) or thereafter; or

(ii) Where a member bank pays that portion of a time deposit on which Federal deposit insurance has been lost as the result of the merger of two or more Federally insured banks in which the depositor previously maintained separate time deposits, for a period of one year from the date of the merger.

(9) A time deposit, or the portion thereof requested, must be paid before maturity without a forfeiture of interest as prescribed by this paragraph in the following circumstances:

(i) Where requested, upon the death of any owner[11] of the time deposit funds; or

(ii) Where requested, when the owner[11] of the time deposit is determined to be legally incompetent by a court or other administrative body of competent jurisdiction.

(e) *Disclosure of early withdrawal penalty.* At the time a depositor enters into a time deposit contract with a member bank, the bank shall provide a written statement of the effect of the penalty prescribed in paragraph (d) of this section, which shall (1) state clearly that the customer has contracted to keep his funds on deposit for the stated maturity and (2) describe fully and clearly how such penalty provisions apply to time deposits in such bank, in the event the bank, notwithstanding the contract provisions, permits payment before maturity. Such statements shall be expressly called to the attention of the customer.

(f) *Loans upon security of time deposits.* Except as provided in § 214.7(e)(2), a member bank may make a loan to the depositor upon the security of his time deposit, provided that the rate of interest on such loan shall be not less than 1 percent per annum in excess of the rate of interest on the time deposit.

[Reg. Q., Jan. 1, 1936, as amended at 44 FR 32648, June 7, 1979; 46 FR 10453, Feb. 3, 1981; 48 FR 224, Jan. 4, 1983; 48 FR 45756, Oct. 7, 1983; 48 FR 56937, Dec. 27, 1983]

EDITORIAL NOTE: For FR documents temporarily suspending the Regulation Q early withdrawal penalty (§ 217.4(d)) for certain depositors in disaster areas, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 217.5 Withdrawal of savings deposits.

(a) *Requirements regarding notice of withdrawal.* Whether or not interest is paid, no member bank shall require or waive notice of withdrawal as to any amount or percentage of the savings deposit of any depositor unless it shall similarly require or waive such notice as to the same amount or percentage of the savings deposit of every other depositor which are subject to the same contractual provisions with respect to notice of withdrawal. If a member bank, without requiring notice of withdrawal, pays interest that has accrued on a savings deposit during the preceding interest period, it shall, upon request and without requiring such notice, pay interest that has accrued during said period on the savings deposits of every other depositor. No member bank shall change its practice with respect to the requiring or waiving of notice of withdrawal of savings deposits for the purpose of discriminating in favor of or against any depositor or depositors, and no such change of practice shall be made except pursuant to duly recorded action of the bank's board of directors or a properly authorized committee thereof.

(b) *Loans on security of savings deposits.* If it is not the practice of a member bank to require notice of withdrawal of savings deposits, no restrictions are imposed by this part upon loans by such bank to its depositors upon the security of such deposits. If it is the practice of a member bank to require notice of withdrawal of a savings deposit, such bank may make loans to a depositor upon the security of such deposit, but the rate of interest on such loans shall be not less than 1 percent per annum in excess of the rate of interest paid on such deposit.

(c) *Manner of payment of savings deposits.* (1) Subject to the provisions of paragraphs (c)(2) and (3) of this section and § 217.7(g), a member bank may permit withdrawals to be made from a savings deposit only through payment[12] to the depositor himself

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[11] For the purposes of this provision, an "owner" of time deposit funds is any individual who died or was determined to be incompetent on or after August 1, 1979, and who at the time of his or her death or determination of incompetence had full legal and beneficial title to all or a portion of such funds or, at the time of his or her death or determination of incompetence, had beneficial title to all or a portion of such funds and full power of disposition and alienation with respect thereto.

[12] Payment from a savings deposit or presentation of a passbook may be made over

Continued

(but not to any other person whether or not acting for the depositor), except—

(i) Where the deposit is represented by a passbook, to any person presenting the passbook;[12]

(ii) To an executor, administrator, trustee, or other fiduciary holding the savings deposit as part of a fiduciary estate, or to a person, other than the bank, holding a general power of attorney granted by the depositor;

(iii) To any person, including the bank, that has extended credit to the depositor on the security of the savings deposit, where such payment is made in order to enable the creditor to realize upon such security;

(iv) Pursuant to the order of a court of competent jurisdiction;

(v) Upon the death of the depositor, to any person authorized by law to receive the deposit; or

(vi) Interest paid to a third person pursuant to written instruction or assignment by the depositor accepted by the bank, and placed on file therein.

(vii) Pursuant to nontransferable withdrawal orders or authorizations received from a depositor by a member bank for the payment of amounts from such deposits to third parties, including the bank (except as prohibited by paragraph (c) 2 of this section), periodically or otherwise. Any such withdrawal order or authorization that may be honored as a withdrawal request for payment to a third party may, if so authorized by the third party, be honored as a transfer to an account of such third party. Any form for such withdrawal order or authorization shall contain language in boldface type of reasonable size to the effect that it is not negotiable or transferable.

(2) Notwithstanding the provisions of paragraph (c)(1) of this section, withdrawals may be permitted by a member bank to be made automatically or as a normal practice from a savings deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to a written authorization from the depositor to make such payments or transfers in order to cover checks or drafts drawn upon the bank or to maintain a specified balance in or to make periodic transfers to such accounts. In accordance with § 217.1(e)(2), a member bank must reserve the right to require the depositor to give notice in writing of an intended withdrawal not less than seven days before such withdrawal is made. Such notice shall be prominently disclosed and specifically brought to the depositor's attention at the time the automatic transfer service is authorized. A member bank may not require a depositor to authorize such automatic transfers to be made from savings deposits.

(3) A member bank may permit depositors to maintain deposits subject to negotiable orders of withdrawal where authorized by Federal law.

(4) Where a savings deposit is evidenced by a passbook, every withdrawal made upon presentation of the passbook shall be entered in the passbook at the time of withdrawal, and every other withdrawal from such a deposit shall be entered in the passbook as soon as practicable after withdrawal is made.

[Reg. Q, 31 FR 15794, Dec. 15, 1966, as amended at 38 FR 34457, Dec. 14, 1973; 40 FR 32737, Aug. 4, 1975; 42 FR 61248, Dec. 2, 1977; 43 FR 20002, May 10, 1978; 45 FR 73016, Nov. 4, 1980; 48 FR 224, Jan. 4, 1983; 48 FR 45757, Oct. 7, 1983; 48 FR 46264, Oct. 12, 1983]

§ 217.6 Advertising of interest on deposits.

Every advertisement, announcement, or solicitation relating to the interest paid on deposits in member banks shall be governed by the following rules:

(a) *Annual rate of simple interest.* Interest rates shall be stated in terms of the annual rate of simple interest. In no case shall a rate be advertised that is in excess of the applicable maximum rate for the particular deposit.

(b) *Percentage yields based on 1 year.* Where a percentage yield achieved by compounding interest during 1 year is advertised, the annual rate of simple interest shall be stated

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the counter, through the mails, or otherwise.

with equal prominence, together with a reference to the basis of compounding. No member bank shall advertise a percentage yield based on the effect of grace periods permitted in § 217.3(d).

(c) *Percentage yields based on periods in excess of 1 year.* No advertisement shall include any indication of a total percentage yield, compounded or simple, based on a period in excess of a year, or an average annual percentage yield achieved by compounding during a period in excess of a year.

(d) *Time or amount requirements.* If an advertised rate is payable only on deposits that meet time or amount requirements, such requirements shall be clearly and conspicuously stated. Where the time requirement for an advertised rate is in excess of a year, the required number of years for the rate to apply shall be stated with equal prominence, together with an indication of any lower rate or rates that will apply if the deposit is withdrawn at an earlier maturity.

(e) *Penalty for early withdrawals.* Any advertisement, announcement, or solicitation relating to interest paid by a member bank on time deposits shall include clear and conspicuous notice that the bank is prohibited from allowing payment of a time deposit before maturity unless substantial interest is forfeited. Such notice may state that,

"Substantial interest penalty is required for early withdrawal."

(f) *Profit.* The term "profit" shall not be used in referring to interest paid on deposits."

(g) *Accuracy of advertising.* No member bank shall make any advertisement, announcement, or solicitation relating to the interest paid on deposits that is inaccurate or misleading or that misrepresents its deposit contracts.

(h) *Solicitation of deposits for banks.* Any person or organization that solicits deposits for a member bank shall be bound by the rules contained in this section with respect to any advertisement, announcement, or solicitation relating to such deposits. No such person or organization shall advertise a percentage yield on any deposit it solicits for a member bank that is not authorized to be paid and advertised by such bank.

[Reg. Q, 34 FR 9702, June 21, 1969, as amended at 35 FR 19662, Dec. 29, 1970; 38 FR 26109, Sept. 18, 1973; 44 FR 32648, June 7, 1979; 48 FR 45757, Oct. 7, 1983]

§ 217.7 Supplement: Maximum rates of interest payable by member banks on time and savings deposits.

Pursuant to the provisions of section 19 of the Federal Reserve Act and § 217.3 of this part, the Board of Governors of the Federal Reserve System hereby prescribes the following maximum rates[1] of interest per annum payable by member banks of the Federal Reserve System on time and savings deposits:

(a) *Time deposits of $100,000 or more, or with original maturities or required notice periods of 32 days or more, or IBF time deposits.* (1) There is no maximum rate of interest presently prescribed on any time deposit of $100,000 or more, or with an original maturity or required notice period of 32 days or more, or on IBF time deposits issued under § 217.1(l).

(2) Except for IBF time deposits, a member bank may permit additional deposits to be made to any time deposit with an original maturity or required notice period of 32 days or more at any time prior to its maturity or expiration of notice period without extending the maturity or required notice period of the entire balance in the account.

(b) [Reserved]

(c) *Savings deposits.* (1) Except as provided in paragraph (g), no member bank shall pay interest at a rate in excess of 5½ percent on any savings deposit.

(2) A member bank may pay interest on any deposit or account—

(i) described in § 217.5(c)(2) at a rate not to exceed 5¼ percent; or (ii) subject to negotiable or transferable orders of withdrawal that is authorized pursuant to 12 U.S.C. 1832(a) at any rate agreed to by the depositor.

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[1] The limitation on rates of interest payable by member banks of the Federal Reserve System on time and savings deposits, as prescribed herein, are not applicable to any deposit which is payable only at an office of a member bank located outside the States of the United States and the District of Columbia.

(d) *Governmental unit time deposits.* Except as provided in paragraphs (a) and (e) and notwithstanding paragraph (b), no member bank shall pay interest on any time deposit which consists of funds deposited to the credit of, or in which the entire beneficial interest is held by, the United States, any state of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or political subdivision thereof in excess of 8 percent.

(e) *Seven- to 31-day time deposits.* (1) Notwithstanding paragraph (d), a member bank may pay interest at any rate as agreed to by the depositor on any time deposit with a maturity or required notice period prior to maturity of not less than seven days nor more than 31 days.

(2)(i) A member bank is not permitted—

(A) To lend funds to a depositor upon the security of a time deposit that it has issued under this paragraph, or

(B) To lend funds to a depositor to meet or maintain the minimum denomination requirement of a time deposit issued under this paragraph.

(ii) The rate of interest and any other charges imposed on an overdraft credit arrangement to which withdrawals are paid or to which payments upon maturity or expiration of a required notice period are made from an account issued under this paragraph must be not less than those imposed on such overdrafts for customers that do not possess an account issued under this paragraph at the same institution.

(3)(i) Where all or any part of a time deposit issued under this paragraph is withdrawn within one business day after the maturity date of the deposit or the date of expiration of notice of withdrawal, no early withdrawal penalty is required to be applied on the amount withdrawn.

(A) All interest earned on the amount withdrawn from the most recent of the date of deposit, date of maturity, or date on which notice was given, or

(B) All interest that could have been earned on the amount withdrawn during a period equal to one-half the maturity period or required notice period.

(ii) Where all or any part of a time deposit issued under this paragraph is withdrawn within one business day after the maturity date of the deposit or the date of expiration of notice of withdrawal, no early withdrawal penalty is required to be applied on the amount withdrawn.

(4) Additional deposits to an account issued under this paragraph with a fixed maturity must be maintained in the account for a period at least equal to the original term of the account and may be regarded as having matured individually and having been redeposited at intervals equal to such period. For accounts issued under this paragraph that are subject to a notice period, additional deposits must remain in the account for a period equal to at least the notice period before such funds may be withdrawn without the imposition of an early withdrawal penalty.

(5) Deposits to any account issued under this paragraph may not be made by automatically transferring funds from another account of the depositor at the same institution where the transfer is initiated by the level of the balance in any account.

(6)(i) Withdrawals from any account issued under this paragraph may not be made

(A) By check, draft, or other third party payment instrument or instruction drawn or issued by the depositor, or

(B) By automatically transferring funds to another account of the depositor where the transfer is initiated by the level of balance in any account held by the depositor.

(ii) Payments at maturity or withdrawals may be paid by

(A) Check or cash to the depositor,

(B) Cash, draft, or electronic transfer issued by the institution to a third party, or

(C) Transfer to any other account held by the depositor.

(iii) Notice of withdrawal from an account issued under this paragraph may be delivered by the depositor to the institution by telephone or other telecommunication, mail, messenger, standing order, or by appearance in person at the offices or premises of the institution.

(f) *Obligations of the parent bank holding company of a member bank.* Interest may be paid on a deposit as defined in § 217.1(h) at a rate not to exceed the maximum rate payable by a member bank on a deposit of equal maturity and denomination. For purposes of this paragraph, the maturity of an obligation of a parent bank holding company is the lesser of the stated maturity period, notice period, or redemption period.

(g) *Money market deposit accounts.* (1) Notwithstanding paragraph (c), a member bank may pay interest at any rate on a deposit account as described in this paragraph.

(2) The average balance for this account may be calculated on the basis of the average daily balance over any computation period selected by the member bank that is not longer than one month. (For purposes of this paragraph, a "month" shall mean, at a member bank's option, either a calendar month or a statement cycle. A statement cycle is normally 28 to 31 days, but may occasionally be as long as 35 days.)

(3) A member bank is not required to establish a maturity on this account. However, it may do so, provided that the maturity is no longer than one month. Furthermore, a member bank may not obligate itself to pay any interest rate or obligate itself to employ any method of calculation of an interest rate on this account for a period longer than one month. A member bank may not condition the interest rate paid or the method of calculation of the interest rate paid upon the period of time funds remain on deposit in this account, if that period is longer than one month.

(4) A member bank must reserve the right to require at least seven days' notice prior to withdrawal or transfer of any funds in this account. If such a requirement for a notice period is imposed by a member bank on one depositor, it must be applied equally to all other depositors holding this account at the same institution.

(5)(i) A member bank is not required to limit the number of transfers of funds from this account to another account of the same depositor when made by mail, messenger, automated teller machine or in person. A member bank is not required to limit the number of withdrawals (*i.e.*, payments directly to the depositor) from this account when made by mail, telephone (via check mailed to the depositor), messenger, automated teller machine or in person. A member bank must restrict all preauthorized (including automatic) transfers of funds from this account to a maximum of six per month. Three of such transfers may be by check, draft or similar device drawn by the depositor to third parties. Telephone transfers to third parties or to another account of the same depositor are regarded as preauthorized transfers. There is no required minimum denomination for the transfers allowed by this paragraph.

(ii) In order to ensure that no more than the permitted number of transfers are made, a member bank must either:

(A) Prevent transfers of funds in this account that are in excess of the limits established by this subparagraph, or

(B) Adopt procedures to monitor those transfers on an ex post basis and contact customers who exceed the limits established by this paragraph on more than an occasional basis. For customers who continue to violate those limits after being contacted by the member bank, the bank will be required to either close the account or take away the account's transfer and draft capacities.

(iii) A member bank, at its option, may use on a consistent basis either the date on a check or the date it is paid in applying the limit on checks established by this paragraph (g)(5).

(iv) The rate of interest or other charges imposed on an overdraft credit arrangement on an account to which withdrawals from this account can be paid must be not less than those imposed on overdrafts for customers who do not maintain this account.

(6) A member bank may offer the account authorized by this paragraph to any depositor.

(7) A member bank is not required to impose restrictions on the number of additional deposits (including sweeps from other accounts) into this account.

[Reg. Q, 38 FR 29461, Oct. 25, 1973, as amended at 47 FR 39659, Sept. 9, 1982; 48 FR 224, Jan. 4, 1983; 48 FR 45757, Oct. 7, 1983; 48 FR 56937-56938, Dec. 27, 1983]

INTERPRETATIONS

§ 217.101 Time deposit of trust funds in member bank's own banking department.

For text of this interpretation, see § 204.102 of this chapter.

[14 FR 7727, Dec. 28, 1949]

§ 217.103 Presentation of savings accounts passbooks.

For text of this interpretation, see § 204.103 of this chapter.

[16 FR 580, Jan. 23, 1951]

§ 217.105 Time certificate with alternate maturities.

(a) Questions have recently been raised as to whether certain forms of time certificates of deposit providing for alternate maturities and increasing rates of interest comply with the requirements of this part relating to payment of interest on deposits by member banks.

(b) Under § 217.6 member banks may not pay interest at a rate in excess of 2½ percent per annum on any time deposit having a maturity date 6 months or more after the date of deposit or payable upon written notice of 6 months or more; in excess of 2 percent on any time deposit having a maturity date less than 6 months and not less than 90 days after the date of deposit or payable upon written notice of less than 6 months and not less than 90 days; or in excess of one percent on any time deposit having a maturity date less than 90 days after the date of deposit or payable upon written notice of less than 90 days.

(c) In applying the provisions of this section, it is the Board's position that if a time certificate permits withdrawal at a stated maturity, the maximum rate of interest payable is to be determined by the length of time between the date of issue and the maturity, or if the certificate does not specify a maturity but permits withdrawal after a prescribed period of written notice, the maximum rate of interest is determined by the length of such period of notice. If a certificate permits withdrawal either at a specified maturity or prior to such time after a specified period of written notice, the maximum rate of interest will depend upon which of such withdrawal privileges is elected by the depositor and the rate applicable under this part in the circumstances of the withdrawal privilege so elected.

(d) For example, if a certificate provides for payment 5 years after date of issue with interest at a rate of 2½ percent, but also provides for earlier payment after 90 days' written notice with interest at a rate of 2 percent, such a certificate complies with the requirements of this part. Similarly, such a five-year certificate providing for earlier withdrawal after 30 days' written notice with interest at a rate of one percent would meet the requirements of this part.

[18 FR 4005, July 9, 1953]

§ 217.106 Rate of interest on loan secured by time deposit.

(a) An inquiry has been received by the Board concerning the permissible rate of interest under § 217.4(e) on a loan by a member bank to its depositor "upon the security of" his time certificate of deposit. The paragraph provides that the rate of interest on such a loan "shall be not less than 2 percent per annum in excess of the rate of interest on" the deposit.

(b) Briefly, the certificate in question provides for payment 3 years after date of issue with interest at a rate of 2½ percent per annum, but provides for earlier withdrawal of the deposit after 90 days' written notice during either of three successive intervals with interest at a rate progressing from 1 to 1½ to 2 percent per annum, respectively.

(c) As indicated by the interpretation contained in § 217.105, such a certificate complies with the provisions of Part 217. The rate of interest payable to the depositor under the terms of the certificate depends upon which of the withdrawal privileges may be elected by him. Accordingly, the Board is of the view that the rate of interest on a loan upon the security of such a certificate of deposit should be no less than 2 percent per annum in excess of the rate of interest to which the depositor would be entitled if he should exercise the particular withdrawal privilege of the certificate available to him at the time of the maturity of the loan.

[18 FR 5505, Sept. 15, 1953]

§ 217.107 Time deposit, open account, with alternate maturities.

(a) An inquiry has been received by the Board as to whether the principle stated in § 217.105 relating to "time certificates with alternate maturities" is applicable also in the case of a "time deposit, open account" as defined in § 217.1(d).

(b) By way of illustration, the inquiry cited a case in which, by the terms of the contract, the deposit would be payable at a stated maturity of 6 months from the date thereof with interest at a rate of 2½ percent, but with an option on the part of the depositor to withdraw all or part of the deposit at an earlier date either after 30 days' written notice with interest at a rate of 1 percent, or after 90 days' written notice with interest at a rate of 2 percent.

(c) It is the Board's view that such a deposit could properly be classified as a "time deposit, open account" and that the principle stated in § 217.105 with respect to time certificates of deposit would also be applicable to such a time deposit, open account; in other words, that the maximum permissible rate of interest would depend upon which of the alternate withdrawal privileges is elected by the depositor and the rate applicable under this part in the circumstances of the withdrawal privilege so elected. The application of this principle is not affected by the fact that the contract of deposit provides contemporaneous, alternative provisions for withdrawal prior to the stated maturity, either of which the depositor might exercise at his option.

(d) The Board is of the view also that, should the depositor withdraw only a part of the deposit pursuant to exercise of either the 30 days' or the 90 days' written notice provision, it would be permissible for the remainder of the original deposit to bear interest at the 2½ percent rate for the specified maturity of 6 months.

[18 FR 6206, Sept. 29, 1953]

§ 217.108 Payroll deduction savings plan.

(a) The Board of Governors has been requested by a member bank to consider the question whether accounts accepted by the bank under a payroll deduction savings plan, proposed to be established for approximately 2,500 employees of a company, may be classified as "savings deposits" under § 217.1(e).

(b) Under the proposed plan, the company would withhold a specified amount from the weekly pay of each employee participating in the plan and deposit such amount to the credit of the employee in the member bank. Thus, on each weekly pay day the participating employee of the company would receive with his pay check a "savings account card" which would show on its face his name, the account number, date of issue of the card, columns for the entry of deposits and withdrawals, the current account balance, and the following inscriptions:

PASSBOOK

SAVINGS DEPARTMENT

—— Bank and Trust Company, ——, ——

This card must be brought to the bank whenever a deposit is made or money withdrawn. Cards for this account bearing a prior date are hereby cancelled.

Savings account rules and regulations which ordinarily appear on the inside cover of the conventional-type passbook would be printed on the reverse side of the card.

(c) It was explained further that the "savings account cards" would be intended to serve the participating employee-depositors as "savings passbooks" until the following weekly pay day when new cards would be issued; that deposits or withdrawals by an employee-depositor between pay days would be permissible and would be entered by a savings teller on the then current card; that the account balance at the end of each weekly period would be carried over to the new card; and that interest payments and taxes would be computed and posted quarterly. Thus, any particular card would show only the deposits and withdrawals made during the current week, and issuance of a new card would automatically cancel cards previously issued. It appears that the proposed plan has been devised so as to permit the bank to use its IBM punch card equipment for the processing of the deposits.

(d) The definition of the term "savings deposit" in § 217.1(e) requires that the deposit shall be "evidenced by a passbook" which must be presented in connection with each withdrawal, except where payment is made to the depositor himself. The regulation also requires that every withdrawal shall be entered in the passbook. Furthermore, the Board has indicated previously that the term "passbook" as used in this part means an account book in which deposits and withdrawals are entered and that such a book should be a continuing record of the transactions in the account.

(e) The 1933 amendments to section 19 of the Federal Reserve Act prohibited the payment of interest on demand deposits and the payment of time deposits before maturity but did not make those restrictions applicable to savings deposits. Accordingly, savings deposits were made a favored class of deposits in that they became the only type of deposit with respect to which member banks were given the privilege of making payment on demand with interest and, at the same time, of carrying reserves less than those required against demand deposits. The versions of this part immediately following the 1933 amendments stated that a "savings deposit", among other things, was a deposit evidenced by a "passbook or other form of receipt". This was similar to the language already in use in Part 204 of this chapter relating to reserves of member banks. However, these definitions proved inadequate to prevent the favored status of savings deposits from leading to certain abuses, including the classification of checking accounts as savings deposits. It was to prevent such abuses and confusion between classes of deposits that both Part 204 of this chapter and this part were amended in 1936 to provide that a deposit may not be regarded as a savings deposit unless "evidenced by a passbook". These amendments to the regulations recognized that a workable distinction between savings accounts and checking accounts could not be maintained unless the regulatory language was such as to prevent various arrangements which would eliminate the use of passbooks of the kind traditionally a distinguishing mark of savings deposits.

(f) The "savings account card" under consideration appears to differ materially from a passbook as it is generally understood and, accordingly, the Board does not regard such a card as constituting a "passbook" within the meaning of § 217.1(e). Therefore, the accounts as proposed under the plan would not be eligible for classification as "savings deposits".

[19 FR 2716, May 12, 1954]

§ 217.109 Adjustment of interest on loan as payment of interest on deposit.

In two recent cases, the Board was presented with questions as to whether an adjustment in the interest rate charged by a member bank on a loan to its customer involved a payment of interest on a demand deposit in violation of section 19 of the Federal Reserve Act and § 217.2(a). Although somewhat similar superficially, the two cases differed factually and the Board reached different conclusions. The two cases are as follows:

(a) *Interest charged borrower on net withdrawable credit.* (1) In the first case considered by the Board, it appeared to be contemplated that a member bank would extend credit to a certain Corporation on the basis of certain installment paper received by the bank from the Corporation and that, in calculating the amount of interest payable by the Corporation to the bank, there would first be deducted from the principal amount of the credit the amount of a cash margin or reserve which would be set aside in a demand deposit account with the bank by the Corporation but which apparently would not be subject to withdrawal. For example, if the credit amounted to $100,000, and a cash margin or reserve of $7,500 were set aside, interest at the rate of 4½ percent would be computed on the basis of $92,500.

(2) In its reply, the Board referred to the fact that it has been the Board's general policy for many years not to pass upon the question whether particular practices involve a payment of interest in violation of this part, except after consideration of all the facts and circumstances of a specific case as developed by examinations of the member bank involved, but to rely instead upon the cooperation and good faith of member banks in adapting their practices to conform to the spirit and purpose of the law and the Board's regulation. This policy has proved to be the most feasible basis for dealing with questions of this kind. However, the Board stated that, as it understood the facts in this case, interest is charged by the bank at the agreed rate on the net amount of the credit available for withdrawal, and no interest is charged on that part of the proceeds which is retained by the bank as a "reserve" and set up as a nonwithdrawable deposit. The Board stated, therefore, that this view of the matter, if factually correct, suggested that the proposed arrangement would involve no question as to a payment of interest on the deposit.

(b) *Amount paid to borrower for account of depositor.* (1) In the other case recently considered by the Board, it appeared that a certain Mortgage Company on the West Coast is engaged in originating and servicing real estate mortgage loans in a given area. After the mortgage loans are in "final form", they are sold by the Mortgage Company to insurance companies, including a certain Life Insurance Company. In most cases, the loans are held by the Mortgage Company from two months to twelve months before they are sold to an insurance company. In order to provide this interim financing, the Mortgage Company borrows continuously from a local national bank through demand notes secured by the real estate loans "in process of completion". The amount of such borrowing was in excess of $1,000,000 from September 1950 to August 1953, and at times has been in the neighborhood of $3,000,000.

(2) The Mortgage Company also services real estate loans for the aforementioned Life Insurance Company. This arrangement involves the collection of interest and principal payments from mortgagors and the accumulation of such collections for periodic transfer to the Life Insurance Company. Prior to 1953, the Mortgage Company from time to time would transfer the balances in its several collection accounts to the Life Insurance Company in New York. Early in 1953, pursuant to its policy of leaving funds on deposit in the localities in which they originate, the Life Insurance Company instructed the Mortgage Company to make the transfers from the collection accounts into a demand account in the above-mentioned national bank in the name of the Life Insurance Company, and this procedure has been followed for the past year or more. A memorandum in the credit files of the national bank dated February 9, 1953, mentions that, under the new arrangement just described, the balance in the Life Insurance Company's account with the bank "will be allowed to build up; and for this reason * * * it has been agreed that we will continue to charge the [Mortgage Company] * * * an interest rate of 4¼ percent but that twice each year—probably July and in January—we will compute the increase in average balance maintained with us by the [Life Insurance Company] and adjust the interest rate paid by the [Mortgage Company] * * * by marking rebate to the latter." A notation in the national bank's credit files dated August 3, 1953, refers to the memorandum just quoted and reiterates that the bank had "agreed to make the [Mortgage Company] * * * a ½ of 1 percent interest adjustment upon net loanable

funds derived from additional balances placed with us by the * * * Life Insurance Company." This notation, which is followed by a computation by which the national bank ascertained that the average "Additional Loanable Funds" in the Life Insurance Company's account during the first six months of 1953 amounted to $82,930.67, also stated that "Based upon the above, adjustment of ½ of 1 percent for the six-month period would amount to $207.33, which amount was remitted to the [Mortgage Company] * * * August 11, 1953." The information submitted also showed that in all probability the "refund" for the last six months of 1953 would exceed the amount for the first six months in that year. Although the national bank makes the payment to the Mortgage Company, the Life Insurance Company benefits from the arrangement to the extent that it permits the Mortgage Company, which is producing real estate loans on behalf of the Life Insurance Company, "to continue to function profitably and obtain the required bank credit."

(3) Summarizing the foregoing facts, it appears that the national bank, in consideration of the Life Insurance Company's maintaining an increased demand deposit balance with the bank, has paid to the Mortgage Company ½ percent per annum of the average "Additional Loanable Funds" so maintained on deposit by the Life Insurance Company. In August 1953 such payment was made by the national bank through an actual remittance to the Mortgage Company.

(4) Based on these facts, the Board of Governors expressed the view that the arrangement involves a payment by the national bank for the account of its depositor, the Life Insurance Company, as compensation for the use of funds constituting a demand deposit, and therefore constitutes the payment of interest on a demand deposit by a member bank in violation of section 19 of the Federal Reserve Act and § 217.2(a).

[19 FR 3006, May 25, 1954]

§ 217.110 Withdrawal from "savings deposit" not evidenced by a passbook.

For text of this interpretation, see § 204.105 of this subchapter.

[20 FR 4209, June 16, 1955]

§ 217.111 Savings deposits without passbook.

(a) The Board has received an inquiry as to whether the proposed use by a national bank of a particular form of "Savings Deposit Receipt" complies with the definition of "savings deposit" contained in paragraph (e) of § 217.1, as amended effective May 16, 1955 (20 FR 3305).

(b) The purpose of the May 16, 1955, amendment was to permit member banks, at their option, to classify deposits as "savings deposits," although not evidenced by a passbook. However, any such deposit must be evidenced by a written receipt or agreement, and the deposit must be one in respect to which the depositor is required, or may at any time be required, by the bank to give notice in writing of an intended withdrawal not less than 30 days before such withdrawal is made, and withdrawals are permitted only through payment to the depositor himself but not to any other person whether or not acting for the depositor. Furthermore, the amendment made no change in the classes of persons whose deposits may be classified as "savings deposits".

(c) The "Savings Deposit Receipt" in question certifies that a certain sum has been deposited with the bank by a named depositor. It recites that payment of such amount "will be made to the named depositor" plus interest at 2½ percent per annum from date of the deposit, upon surrender of the receipt; that, upon request, interest will be paid and endorsed upon the receipt every six months; and that the bank shall have the option of redeeming the receipt at any time upon six months' written notice to the depositor. The receipt then states that "The bank reserves the right to require thirty days' prior notice in writing before paying this savings deposit receipt." Finally, the receipt states that it is "non-negotiable." It appears that the receipt constitutes the deposit contract between the bank and the named depositor.

(d) The inquiry explained that the national bank intended to use the savings deposit receipt "only in connection with deposits of school districts and any other savings deposits that might qualify under Regulation Q." The Board has indicated in earlier interpretations that deposits of "school districts" may be classified as "savings deposits."

(e) In the circumstances as outlined in this section, including the specific limitation in the savings deposit receipt that "Payment will be made to the named depositor," the Board is of the view that a deposit represented by the receipt described may be classified as a "savings deposit" under this part.

[20 FR 7355, Oct. 4, 1955]

§ 217.112 Interest on time deposits with alternate maturities.

(a) The Board was asked recently whether four forms of time deposit contracts complied with the requirements of this part. The first was evidenced by a certificate which provided for a maturity 6 months after date of deposit with an option on the part of the depositor to withdraw part or all of the funds, without notice, on the 30th day after the date of deposit, or on the 90th day after the date of deposit, and which provided that funds withdrawn on the 20th day would bear interest at a rate of 1 percent, funds withdrawn on the 90th day would bear interest at a rate of 2 percent, and funds withdrawn at the end of 6 months would bear interest at a rate of 2½ percent.

(b) With respect to the form of certificate in paragraph (a) of this section, the Board referred to its interpretation published as § 217.105 which expressed the view that if a time certificate permits withdrawal either at a specified maturity or prior to such time after a specified period of written notice the maximum rate of interest will depend upon which of such withdrawal privileges is elected by the depositor and the maximum rate applicable under the regulation in the circumstances of the withdrawal privilege so elected. For example, a certificate providing for payment 5 years after date with interest at 2½ percent, but providing also for earlier payment after 90 days' written notice with interest at 2 percent, would comply with the regulation. Such certificate has a single fixed maturity but provides that an earlier maturity may be fixed at the option of the depositor with a resulting reduction in the rate of interest payable.

(c) The Board pointed out that, by contrast, the certificate described in paragraph (a) of this section had several fixed maturities, the first of which was 30 days after date of deposit, so that the deposit when established was payable 30 days after date. Section 217.6 provides that no member bank shall pay interest at a rate in excess of 1 percent per annum on a time deposit having a maturity date less than 90 days after the date of deposit or payable upon written notice of less than 90 days. The Board said that, consequently, the 2 percent and 2½ percent rates of interest provided for under the form of time certificate described in paragraph (a) of this section would be in excess of the maximum rates prescribed by this part.

(d) The second deposit contract on which the Board's views were requested was a 6 months' time deposit with interest at a rate of 2¼ percent but with an alternate fixed maturity of 90 days after date with interest at 2 percent. The third contract represented a deposit payable 11 months after date with interest at a rate of 2⅜ percent but with alternate fixed maturities of 90 days, 4 months, and 5 months, with interest at 2 percent; 6, 7, and 8 months, with interest at 2¼ percent; and 9 and 10 months with interest at 2⅜ percent. The Board stated that the foregoing views expressed with respect to the form of deposit contract described in paragraph (a) of this section were applicable also to the second and third forms of contracts described in this paragraph.

(e) The fourth form of contract represented a time deposit having a fixed maturity dated 6 months after the date of deposit but with an option on the part of the depositor to withdraw a part or all of the funds either on 90 days' advance written notice at a rate of 2 percent, or on 30 days' advance written notice at a rate of 1 percent if withdrawn during the first 90 days or at a rate of 2 percent if withdrawn after the 90th day following the date of deposit. The Board said that such a contract providing for payment of interest at a rate of 2 percent on a deposit withdrawn after 30 days' written notice would not comply with this part.

(f) The Board said that in connection with all four of the forms of deposit contracts described in this section, it is important to bear in mind that the maximum permissible interest rate does not depend upon the length of time the deposit is left with the bank. Where the deposit contract provides a fixed maturity but with an option on the part of the depositor to withdraw after a prescribed period of notice, the maturity is that named in the certificate unless and until the depositor exercises his option to change that maturity, and in that event the maximum interest rate payable will be the rate applicable under the regulation with respect to the period of such notice of withdrawal given by the depositor. Where the certificate itself names alternate fixed maturities, as in three of the certificates discussed in this section, without provision for withdrawal after notice upon the option of the depositor, the certificate must be regarded as maturing at the earliest fixed maturity and, if not withdrawn at that time or at any subsequent fixed maturity, as being automatically renewed until the date of the next following fixed maturity; and the maximum interest rate payable upon withdrawal at any fixed maturity would be the maximum rate applicable under the regulation to the period from the previous automatic renewal to the date of such withdrawal.

[21 FR 6269, Aug. 21, 1956]

§ 217.113 Time certificate of deposit with automatic renewal.

(a) The Board of Governors has been asked to consider whether a proposed certificate which recites that the deposit evidenced thereby would be payable to the depositor on return of the certificate 12 months after date with interest at a certain per cent per annum payable semi-annually, but which contains a legend on the face thereof which states that it is "continuous," that "no renewal is necessary," and refers to the reverse side of the certificate for "further provisions," complies with the provisions of this part.

(b) The reverse side of the certificate recites that it "shall be considered renewed automatically for an additional period of 6 months beyond its original term and thereafter for additional periods each of 6 months; unless presented for redemption within 10 days after the end of the original term or any subsequent term provided for herein, or unless the depositor shall have given written notice to the bank of his desire to redeem this Certificate 30 days prior to the original or any subsequent maturity date." It is recited further that the bank retains the right to redeem the certificate on the original or any subsequent maturity date upon 30 days' prior written notice, and reserves the right to change the interest rate for any subsequent renewal period from time to time upon 30 days' written notice prior to the beginning of such renewal.

(c) The Board would have no objection to the classification of the proposed certificate as a "time certificate of deposit" merely because it would be labeled as a "Savings Certificate." However, for a certificate to be classified as a "time certificate of deposit", § 217.1(c) requires that the provisions of the certificate relating to the manner and terms of payment appear "on its face". The provisions which appears on the reverse side of the certificate with respect to automatic renewal and redemption are of a kind that should appear on the face of the certificate. Otherwise, the Board believes a certificate in the form proposed would be properly classifiable as a "time certificate of deposit" under this part.

(d) Such certificate in no event is payable prior to the expiration of the original 12 months' period or one of the successive renewal periods of 6 months each. Therefore, under the principle applicable to time certificates of deposit with alternate fixed maturities stated in § 217.112, it would be permissible for the certificate in question to bear interest at a rate not to exceed 3 percent per annum. This conclusion would not be affected by the fact that either the bank or the depositor may prevent automatic renewal of the certificate by giving written notice of intended withdrawal or redemption 30 days prior to an automatic renewal date.

(e) The additional fact that the depositor may prevent automatic renewal by presenting the certificate for payment within 10 days after the end of the original term or any subsequent renewal period, would not, in the Board's opinion, be objectionable in view of the principle established by the interpretation published at 1936 Federal Reserve Bulletin 419. Of course, payment of the certificate pursuant to presentment within such 10-day period would preclude the bank from paying interest for any part of such period.

[22 FR 2533, Apr. 13, 1957]

§ 217.114 Grace period for receipt of savings deposits ending on holiday.

(a) The Board's advice has been requested as to whether the 10-calendar-day grace period now permitted by § 217.3(d) in computing the maximum rate of interest on savings deposits, extends to the following business day in the event that the 10th calendar day of the month falls on Saturday, Sunday, or a legal holiday.

(b) This provision was recently liberalized so as to allow a grace period of 10 calendar days rather than 5 business days in every calendar month. It was recognized that the amendment would have a slightly restrictive effect in the case of months commencing a regular quarterly or semi-annual interest period in which deposits formerly could be received through the 10th business day, but, as stated above, the general effect was of a liberalizing nature. The Board believes that 10 calendar days is sufficient time to permit a customer to make a deposit in a savings account and receive interest at the maximum rate for the entire month. Therefore, the Board does not believe that further days of grace should be allowed when the 10th calendar day falls on Saturday, Sunday, or a legal holiday.

(12 U.S.C. 264, 371)

[24 FR 8371, Oct. 15, 1959]

§ 217.115 Time of receipt of savings deposit for grace period purposes.

(a) Paragraph (d) of § 217.3 provides that a member bank may pay interest on a savings deposit received during the first 10 calendar days of any calendar month at the applicable maximum rate prescribed by the Regulation from the first day of such calendar month until such deposit is withdrawn or ceases to constitute a savings deposit, whichever shall first occur. The opinion of the Board of Governors has been requested as to whether deposits received under the following circumstances will be eligible to receive interest from the first of the month:

(1) Mail deposits postmarked the 10th or earlier;

(2) Deposits received in the "drop box" located in the bank lobby and opened the morning of the 11th;

(3) Deposits received in the night depository and opened the morning of the 11th;

(4) Collections outstanding until the 11th or a subsequent date;

(5) Auto bank deposits not received in the savings department until the morning of the 11th;

(6) Transfers from branches received at the Main Office on the 11th;

(7) Inter-department credits held over until the 11th due to late hour business.

(b) As to the first situation, it is the Board's opinion that the postmark does not determine when the deposit is delivered to the bank; that is, received by it. The customer adopts the post office as his agent and, therefore, must rely upon such agent making the deposit within the first 10 calendar days.

(c) In the second and third situations, deposit in the drop box or night depository during the first 10 calendar days amounts to receipt by the bank and the day the bank opens the drop box or night depository does not change this. An extreme situation would be when the 10th day is Saturday and the drop box or night depository is not opened until Monday, the 12th. Although a deposit may possibly have been made on the 11th, the bank might reasonably assume that the deposit was made within the 10 calendar days.

(d) As to the fourth situation, items received for collection on or before the 10th calendar day may be included although final credit is not given until after the 10th day.

(e) In situations five, six, and seven, if the deposit is delivered to the bank, branch, or any office thereof by the 10th calendar day, interest may be credited from the 1st day of the month regardless of when the item is processed and credit is given.

(12 U.S.C. 264, 371)

[25 FR 3395, Apr. 20, 1960]

§ 217.116 Monthly payment by check of interest on deposits.

(a) The Board has recently considered the question whether a member bank's plan for payment of interest on a one-year time certificate of deposit conforms with the requirements of Part 217. Under this plan the bank would pay interest monthly by means of check in an amount equal to one-twelfth of the amount that would have been paid for the year if the bank had compounded interest quarterly at the maximum permissible rate of 3 percent.

(b) Section 217.6 prohibits a member bank from paying interest on a savings deposit or on a time deposit having a maturity of 6 months or more "at a rate in excess of 3 percent per annum, compounded quarterly, regardless of the basis upon which such interest may be computed." A footnote states that this limitation "is not to be interpreted as preventing the compounding of interest at other than quarterly intervals, provided that the aggregate amount of such interest so compounded does not exceed the aggregate amount of interest at the rate above prescribed when compounded quarterly."

(c) These provisions in effect permit a member bank to pay interest in an amount somewhat greater than that paid on a straight 3 percent basis if the bank's practice is to compound interest, provided that on whatever basis interest is compounded the amount "so compounded" does not exceed the amount that would have been paid at the maximum rate when compounded quarterly. The regulation does not prevent a member bank from paying interest monthly by check instead of compounding interest. However, the regulation does not contemplate payment of interest in excess of a straight or simple rate of 3 percent except where it is paid on interest left in the account, that is, where interest is compounded. Accordingly, a plan under which monthly payments are made by check in an amount equal to one-twelfth of the amount that would have been paid for a year if the bank had compounded interest quarterly at a rate of 3 percent would not be in accordance with the regulation.

(d) The same principles would, of course, apply to monthly payments of interest by check on a time deposit having a maturity of less than 6 months and on which the maximum permissible rate would be 2½ percent or 1 percent. They would equally apply to monthly payments of interest on savings deposits.

(12 U.S.C. 264, 371)

[25 FR 5923, June 28, 1960]

§ 217.117 Absorption of exchange charged as payment of interest.

(a) The Board has had occasion to consider whether certain practices involving the absorption of exchange charges constitute the payment by a Federal Reserve member bank of interest on demand deposits in violation of this Part 217 and section 19 of the Federal Reserve Act.

(b) One question was whether such absorption would constitute the payment of interest on demand deposits when the amounts absorbed by a member bank are claimed to be less than the cost of collecting them from depositors. Another question was whether a member bank would be paying interest on demand deposits if it maintained balances with another bank or banks in return for which such other bank or banks directly or indirectly would absorb for it exchange charges made by the drawee banks.

(c) Upon a careful review of the subject, the Board has concluded that both these practices should be deemed to be the payment of interest on demand deposits in violation of this Part 217 and section 19 of the Federal Reserve Act. In other words, the payment of interest includes any direct or indirect payment or absorption of exchange charges by any device whatsoever, regardless of whether such payment or absorption is made directly by a member bank or indirectly through any other bank for a member bank or a depositor of such member bank. This principle will be applied hereafter by examiners for the Federal Reserve Banks in their examinations of State member banks and the Comptroller of the Currency has advised that it will be applied by national bank examiners in their examinations of national banks.

(d) In reaching this conclusion the Board has carefully reexamined earlier interpretations on the subject, and this interpretation supersedes all such earlier interpretations, including those published in the 1944 Federal Reserve Bulletin, p. 339, and 1945 Federal Reserve Bulletin, p. 564.

(12 U.S.C. 264, 371)

[25 FR 7620, Aug. 11, 1960]

§ 217.118 Absorption of intangible personal property tax on bank deposits.

(a) The Board of Governors has been asked to consider the question whether the payment, by banks in a certain State that are members of the Federal Reserve System, of the State's intangible personal property tax on bank deposits would be an indirect payment of interest on such deposits within the purview of section 19 of the Federal Reserve Act.

(b) The Board has heretofore considered other State laws which specifically require all banks to pay such taxes in the first instance, although the banks may, if they wish, obtain reimbursement from the depositors. In those cases, the Board has taken the position that payment of the tax by a member bank would not constitute an indirect payment of interest on deposits.

(c) The State statute under consideration does not require, or apparently even contemplate, that banks will pay these taxes and, therefore, may not seem closely analogous to the statutes considered previously. However, there is very little difference between a bank being required to pay the tax but not demanding reimbursement and a bank voluntarily paying the tax and also not seeking reimbursement. Therefore, for the sake of uniformity and to avoid individual decisions based upon the wording of particular State laws, the Board has concluded that the absorption by a member bank of intangible personal property tax upon a bank deposit should not be considered a payment of interest on such deposit within the meaning of section 19 of the Federal Reserve Act regardless of whether the tax is levied against the bank or the depositor.

(12 U.S.C. 264, 371)

[25 FR 9845, Oct. 14, 1960]

§ 217.119 Associated Hospital Service ineligible to maintain savings account.

(a) The Board of Governors has been requested to give its opinion on the question whether Associated Hospital Service of a particular city is eligible to maintain a savings account. It is understood that the Association is a nonprofit corporation that operates a plan whereby hospitalization is provided for subscribers to such plan by any hospital with which the Association has a contract.

(b) A savings deposit is defined in § 217.1(e) as a fund deposited to the credit of one or more individuals, or of a corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes and not operated for profit.

(c) It is urged that the Association is eligible to maintain a savings account since it is a nonprofit organization and the statute under which it is organized provides that such corporations are "hereby declared to be charitable and benevolent institutions, and all of their funds and investments shall be exempt from taxation by the Commonwealth and its political subdivisions."

(d) There is no indication that the Association is operated for charitable purposes even though the organic Act declares it to be a charitable institution. A plan for hospital insurance and medical and surgical benefits is provided for subscribers thereto and no element of charity is present. The insurance risk in such plans is usually determined on an actuarial basis and payments by subscribers are based upon disbursements by the Association computed upon such basis and past experience. Therefore, the Board is of the opinion that Associated Hospital Service is similar to other mutual insurance plans which the Board has held to be ineligible to maintain savings accounts in member banks.

(12 U.S.C. 264, 371)

[25 FR 9845, Oct. 14, 1960]

§ 217.120 Authority for absorption of certain nominal exchange charges.

(a) In an interpretation of August 4, 1960, published at 25 FR 7620, the Board expressed the opinion that any absorption by member banks of exchange charges would constitute the payment of interest on demand deposits, including an arrangement whereby a member bank maintained a balance with another bank in return for which such other bank directly or indirectly absorbed for it exchange charges made by drawee banks.

(b) The Board has been asked to reconsider the application of the interpretation in certain situations said to involve relatively small amounts of exchange charges and those where the cost of collection is said to exceed the amount of the charges. The Board of Governors, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have decided to undertake a study to obtain additional information. In connection therewith, a survey will be made of a number of institutions in each Federal Reserve District on a spot-check basis.

(c) Further consideration will be given the subject in the light of the findings of the survey. In the meantime, and as a tentative authorization, to be applicable only during the pendency of the study and the reaching of a final determination, member banks are authorized to absorb exchange charges in amounts aggregating not more than $2 for any one depositor in any calendar month or any regularly established period of 30 days.

(d) Member banks, both State and national, will be expected to conform to the August 4, 1960, interpretation as herein modified.

(12 U.S.C. 264, 371)

[25 FR 10866, Nov. 16, 1960]

§ 217.121 Savings deposits not evidenced by a pass book.

(a) Regulation Q, Payment of Interest on Deposits, permits a member bank to classify as "savings deposits" funds of individuals and certain types of corporations that are held by the bank, evidenced only by a written receipt or agreement, provided "withdrawals are permitted only through payment to the depositor himself but not to any other person whether or not acting for the depositor." The purpose of this prohibition is to eliminate the so-called "agency privilege." The reason for this is that withdrawal by an agent of the depositor merely by presenting a "written receipt or agreement" for a specific amount deposited with the bank could result in the use of such deposits, in effect, as checking accounts.

(b) For example, in lieu of taking one "receipt" for his deposit of, say, $100, the depositor could request 20 receipts for $5 each. Then, when he wished to pay a bill, he could hand his creditor sufficient receipts and the latter, as his "agent", could present them for payment. This procedure is possible with a savings deposit evidenced by a pass book, but the cumbersome procedure of turning the pass book over to a third party is a deterrent to the use of such savings accounts for checking purposes. At least not more than one so-called check could be outstanding against the savings account at any time, because the depositor would have to regain the pass book before turning it over to another person for a second withdrawal of funds.

(12 U.S.C. 264, 371)

[26 FR 2219, Mar. 16, 1961, as amended at 34 FR 7899, May 20, 1969]

§ 217.124 Rate of interest on interest compounded quarterly at maximum rate.

(a) The views of the Board of Governors of the Federal Reserve System have been requested as to whether, in paying interest on a savings account at 4 percent, compounded quarterly, interest paid on interest may be computed at the 4-percent rate since the basic interest credited to the account quarterly will, of course, not have been on deposit for 12 months.

(b) It is provided in § 217.6 that "No member bank shall pay interest accruing at a rate in excess of 4 percent perannum, compounded quarterly, regardless of the basis upon which such interest may be computed", on that portion of the deposit that has remained on deposit for not less than 12 months. This permits a member bank, under certain circumstances, to pay interest at a rate of 4 percent, compounded quarterly. Therefore when a member bank, pursuant to this authority, agrees to pay interest on a 12-month deposit at a rate of 4 percent, compounded quarterly, the bank is obligated to compute the interest on the interest at 4 percent.

(c) In compounding interest, the interest being credited to the account quarterly is not treated the same as a new deposit; on such a deposit, interest would be restricted to a rate of 3½ percent until the funds have remained on deposit for 12 months at which time they become eligible for the so-called retroactive bonus of ½ percent. It has been recognized (§ 217.116) that in compounding interest, a bank is permitted to pay interest in an amount slightly greater than that paid on a straight yearly percentage basis.

(Sec. 8, 48 Stat. 168, as amended; 12 U.S.C. 264, 371)

[27 FR 2763, Mar. 24, 1962]

§ 217.126 Foreign, international, and supranational entities exempt from interest rate limitations.

Pursuant to § 217.3(g)(3), the following entities are hereby designated as exempt from § 217.7:

EUROPE

Bank for International Settlements.
European Atomic Energy Community.
European Coal and Steel Community.
The European Communities.
European Development Fund.
European Economic Community.
European Free Trade Association.
European Fund.
European Investment Bank.

LATIN AMERICA

Andean Development Corporation.
Andean Subregional Group.
Caribbean Development Bank.
Caribbean Free Trade Association.
Caribbean Regional Development Agency.
Central American Bank for Economic Integration.
The Central American Institute for Industrial Research and Technology.
Central American Monetary Stabilization Fund.
East Caribbean Common Market.
Latin American Free Trade Association.
Organization for Central American States.
Permanent Secretariat of the Central American General Treaty of Economic Integration.
River Plate Basin Commission.

AFRICA

African Development Bank.
Banque Centrale des Etats de l'Afrique de l'Ouest.
Banque Centrale des Etats de l'Afrique Equatorial et du Cameroun.
Conseil de l'Entente.
East African Community.
Organisation Commune Africaine et Malagache.
Organization of African Unity.
Union des Etats de l'Afrique Centrale.
Union Douaniere et Economique de l'Afrique Centrale.
Union Douaniere des Etats de l'Afrique de l'Ouest.

ASIA

Asia and Pacific Council.
Association of Southeast Asian Nations.
Bank of Taiwan.
Korea Exchange Bank.

MIDDLE EAST

Central Treaty Organization.
Regional Cooperation for Development.

[35 FR 1156, Jan. 29, 1970; 35 FR 2953, Feb. 13, 1970]

§ 217.131 Exchange of 12-month certificate of deposit for 90-day certificate.

The Board of Governors of the Federal Reserve System has been requested for an opinion on whether outstanding time certificates of deposit with maturities of 12 months or more and paying interest at the rate of 4 percent per annum, may be exchanged for new certificates having maturities of 90 days or more and bearing interest at the 4 percent rate now permitted on deposits of such maturities. In the Board's opinion, the exchange of an outstanding time certificate with a maturity of 12 months or more for a certificate having a maturity of 90 days or more that would mature prior to the maturity date of the original certificate, would constitute the payment of a time deposit before maturity in violation of section 19 of the Federal Reserve Act and Regulation Q, as it would, in effect, permit the depositor to withdraw his initial deposit before 12 months have elapsed.

(12 U.S.C. 264)

[28 FR 8282, Aug. 13, 1963]

§ 217.132 Deposits of trustees in bankruptcy as "savings deposits."

(a) The opinion of the Board of Governors of the Federal Reserve System has been requested as to whether the authority under section 19 of the Federal Reserve Act to define "savings deposits" and the definition of that term, as contained in this part, which limits savings deposits to individuals and certain types of organizations, are affected by Pub. L. 88-16 of May 8, 1963, which amended section 47 of the Bankruptcy Act (11 U.S.C. 75(a)(2)) so as to authorize trustees in bankruptcy to "deposit all money received by them in designated depositories initially in demand deposits; and subsequently, if authorized by the court, in interest-bearing savings deposits, time certificates of deposit, or time deposits-open account;".

(b) Prior to this amendment to the Bankruptcy Act, trustees in bankruptcy were required by judicial decisions to obtain creditors' consent to make other than demand deposits. There is nothing in the legislative history of this amendment to indicate that its purpose was more than to eliminate the need for creditors' consent for deposits in interest-bearing savings or time deposits. In the absence of any evidence of intent to modify section 19 of the Federal Reserve Act and the Board's authority thereunder, it is the opinion of the Board that the definition of savings deposits in Part 217 has not been affected by this amendment to the Bankruptcy Act.

(c) Under paragraph (1)(i) of § 217.1 (e), a "savings deposit" must be (1) a deposit to the credit of one or more individuals or certain types of organizations or (2) a deposit as to which the "entire beneficial interest" is held by individuals or such organizations. A trustee in bankruptcy holds the assets of the bankrupt estate for the benefit of the bankrupt's creditors. Accordingly, it is the Board's opinion that a deposit by a trustee in bankruptcy may not be classified as a savings deposit under Part 217 except in those rare instances in which all of the bankrupt's creditors are individuals or organizations of the types described in the regulatory definition of a "savings deposit."

(d) It would be permissible, of course, for funds of a trustee in bankruptcy to be classified as time deposits under Part 217. In this connection, it may be noted that, as a result of the action taken by the Board of Governors and the Federal Deposit Insurance Corporation on July 17, 1963, member and nonmember insured banks could now pay interest at a rate up to 4 percent on a time deposit of a trustee in bankruptcy having a maturity of not less than 90 days.

(12 U.S.C. 264)

[28 FR 9384, Aug. 27, 1963]

§ 217.133 Withdrawal of uninsured portion of deposit after bank merger.

(a) The opinion of the Board of Governors of the Federal Reserve System has been requested as to whether a member bank may permit the immediate withdrawal of time or savings deposits when the bank has absorbed another bank by merger and depositors common to both banks have such accounts in the resulting bank in excess of $10,000, the amount covered by deposit insurance.

(b) If such accounts are represented by time certificates, it is questionable whether the circumstances described would constitute an "emergency" under § 217.4(d) where payment before maturity would be necessary to prevent "great hardship" to the depositor. However, in view of the equities of the situation, the Board would not object to a liberal interpretation of this provision of the regulation. Attention is called to the fact that in connection with such a withdrawal the depositor must forfeit up to three months of accrued and unpaid interest. Thus, in the case presented, the depositor would have the choice of allowing funds in excess of $10,000 to remain on deposit without the benefit of insurance, or withdrawing the funds at a sacrifice of some interest.

(c) If the two accounts are in the form of savings deposits, and if the bank permits the withdrawal of savings deposits without requiring advance written notice, the customer could withdraw any part of his savings deposit at any time and the bank, if it wishes, could pay accrued interest up to the time of the withdrawal.

(12 U.S.C. 264)

[28 FR 12360, Nov. 22, 1963]

§ 217.134 Interest on time certificate falling due on holiday.

(a) The opinion of the Board of Governors of the Federal Reserve System has been requested on the question whether an extra day's interest may be paid by a member bank on a time certificate of deposit which falls due on a day declared by State law to be a legal holiday.

(b) It is provided in § 217.3(f) that after the date of "maturity" of any time deposit such deposit is a demand deposit and no interest may be paid thereon for any period subsequent to the date of maturity.

(c) The date on which an obligation is due and payable is, of course, determined by the terms of the contract subject to State law, and in most jurisdictions an obligation falling due on a Sunday or a holiday comes due on the next succeeding business day. As far as this Part 217 is concerned, the "maturity" of a time certificate is the day it is legally due and payable; and the funds represented thereby do not become a demand deposit until after that date. Accordingly, where a certificate by its terms falls due on a Sunday or a holiday and under State law is due and payable on the next succeeding business day, this Part 217 would not preclude payment of interest on the deposit until and including the day on which it is so payable.

(12 U.S.C. 264)

[28 FR 12360, Nov. 22, 1963]

§ 217.135 Savings accounts by corporations operated for profit prohibited.

(a) The Board of Governors has received inquiries regarding an interpretation issued by the Comptroller of the Currency under date of December 19, 1963, to the effect that "a national bank may * * * accept savings accounts without regard to whether the funds deposited are to the credit of one or more individuals or of a corporation, association, or other organization, whether operated for profit or otherwise."

(b) As members of the Federal Reserve System, national banks are subject to the provisions of section 19 of the Federal Reserve Act (12 U.S.C. 371a, 371b) which prohibit member banks from paying interest, directly or indirectly, on any demand deposit and which require the Board of Governors to limit the rate of interest that may be paid by such banks on time and savings deposits. To this end, it is necessary to define the terms "demand deposits" and "savings deposits"; and the law (12 U.S.C. 461) expresaly authorizes the Board of Governors to define such terms and to prescribe regulations to effectuate the purposes of the statute and prevent evasions.

(c) This Part 217 defines a "savings deposit" in a manner that permits such deposits to be made only by individuals or by corporations, associations, and other organizations which are not operated for profit but for religious, philanthropic, charitable, educational, fraternal, or similar purposes. This definition has been in effect since 1936.

(d) Accordingly a deposit by a corporation operated for profit may not be classified by any member bank, including a national bank, as a savings deposit. Unless such a deposit comes within the definition of a "time deposit" it would constitute a demand deposit under this Part 217 and payment of interest on such deposit by a national bank would violate the prohibition of the law against payment of interest on demand deposits.

(e) Failure of a national bank to comply with provisions of the Federal Reserve Act constitutes grounds for instituting legal proceedings to close the bank. The law also provides that any director of a national bank participating in or assenting to a violation shall be personally liable for any damages that may be sustained by the bank, its shareholders, or any other persons in consequence of the violation.

(f) In addition, Part 204 of this subchapter, relating to reserves required to be maintained by member banks in the Federal Reserve System, contains a definition of savings deposits identical to that of this Part 217. No deposit of a business corporation in a member bank may be classified as a savings deposit for reserve purposes and, unless it falls within the definition of a time deposit, a national bank must maintain against such a deposit the reserves applicable to demand deposits (16½ percent for reserve city banks and 12 percent for other member banks), rather than those applicable to time and savings deposits (4 percent for all member banks). Classification of such a deposit as a savings deposit would violate Part 204 of this subchapter and subject the member bank to a penalty for any resulting reserve deficiency.

(12 U.S.C. 264)

[29 FR 398, Jan. 16, 1964]

§ 217.136 Deposit contract providing for three months' maturity with option to withdraw on ninety days' notice.

(a) The Board of Governors has recently considered an inquiry as to whether a deposit contract of the following nature complies with this part.

(b) The contract provides in effect that each deposit will mature 3 months after deposit, except that the whole or any part of the deposit may be withdrawn "before such maturity" at the expiration of either 90 days' or 30 days' written notice; that any part not withdrawn at maturity or pursuant to notice of withdrawal will be deemed to be redeposited for an additional 3-month period dating from the end of the original period, subject to the same terms and conditions; and that, if not withdrawn, the deposit will be similarly renewed for successive 3-month periods up to an aggregate period of 2 years. Interest would be paid at a rate of 4 percent (the maximum rate currently permitted by this part in the case of time deposits maturing in 90 days or more), except that, if withdrawn pursuant to 30 days' notice, the rate would be one percent per annum (the maximum rate in the case of time deposits maturing in less than 90 days) from the beginning of the "renewal period" in which the deposit is withdrawn.

(c) Where a time deposit contract provides for payment on a specified maturity date and also affords the depositor the alternative of withdrawing the deposit pursuant to a notice of withdrawal, the two withdrawal privileges are incompatible if the depositor gives a notice of withdrawal that would expire after the specified maturity date, unless the giving of such notice is regarded as equivalent to an extension of the specified maturity and as supplanting that maturity. In other words, as applied to the form of deposit contract above described, if the deposit is initially made on January 1 to mature on March 31 (that is, after 90 days), and if on March 1 the depositor gives 90 days' notice of withdrawal, so that the period of such notice would expire after the original maturity date, the March 1 notice of withdrawal would not be revocable but must be construed as extending the maturity of the deposit from March 31 to May 29. Any other construction of such a contract would have the effect of permitting a member bank to agree to pay interest at a rate of 4 percent on a deposit that could be withdrawn within less than 90 days.

[29 FR 8003, June 24, 1964]

§ 217.137 Member bank participation in "Federal funds" market.

(a) Since the adoption of § 217.1(f) in 1966, an exemption from Regulation Q has existed for member bank obligations in nondeposit form to another bank. As used in such exemption, "bank" includes a member bank, a nonmember commercial bank, a savings bank (mutual or stock), a building or savings and loan association or cooperative bank, the Export-Import Bank of the United States, Minbanc Capital Corp., a foreign bank, or a credit union. It also includes bank subsidiaries that engage in business in which their parents are authorized to engage and subsidiaries the stock of which is by statute explicitly eligible for purchase by national banks. These institutions are considered to be "banks" also for the purposes of Regulation D (12 CFR Part 204).

(b) To assure that the exemption for liabilities to banks is not used as a means by which nonbanks may arrange through a bank to "sell" Federal funds to a member bank that are not subject to Regulations D and Q, obligations within the exemption must be issued to another bank for its own account. In view of this requirement, a member bank that "purchases" Federal funds should take such action as may be necessary to ascertain the character (not necessarily the identity) of the actual "seller" in order to justify classification of its liability on the transaction as "Federal funds purchased" rather than as a deposit. Any bank that has given general assurance to a member bank that sales by it of Federal funds ordinarily will be for its own account and thereafter executes such transactions for the account of others, should disclose the nature of the actual lender with respect to each such transaction. If it fails to do so, the selling bank would be deemed by the Board as indirectly violating section 19 of the Federal Reserve Act and Regulation Q.

(c) Also to assure the effectiveness of the limitations on persons who sell Federal funds to member banks, the amended § 217.1(f) applies to nondocumentary obligations undertaken by a member bank to obtain funds for use in its banking business, as well as to documentary obligations. In recent months a number of banks have made the Federal funds market available to business corporations. In some cases this has been on the basis of book entries, in which no instrument is involved. Under the amendment, a bank's liability under informal arrangements as well as those formally embodied in a document are within the coverage of § 217.1(f).

(d) The expansion of § 217.1(f) to nondocumentary obligations does not mean that every bank liability on a transaction that results in the bank obtaining funds is a deposit. An indorser's or conditional liability such as arises when a bank sells a loan with recourse need not be classified as a deposit liability. Also, a bank's liability on an acceptance that it sells in the market is not a deposit liability under the amendment.

(e) It should also be noted that when a member bank issues an obligation principally for a purpose other than as a means of obtaining funds to be used in its banking business—such as usually would be the case with respect to a due bill issued to evidence the bank's liability to deliver securities or foreign exchange sold—it need not classify its liability thereon as a deposit. However, the circumstances surrounding an obligation issued ostensibly for a purpose other than obtaining funds for use in the ordinary course of business may cause an obligation to become subject to Regulation Q—for example, if the bank's liability on a due bill extended beyond a period exceeding that necessary to complete the securities sale, or if the bank paid interest to the customer in excess of the amount that accrued on the securities sold during the delay in delivery.

[35 FR 528, Jan. 15, 1970, as amended at 44 FR 60076, Oct. 18, 1979]

§ 217.138 Nonbank participation in "Federal funds" market.

(a) The Board has recently considered whether the use of "interbank loan participations" ("IBLPs"), which involves participation by nonbank third parties in Federal funds transactions, comes within the exemption from "deposit" classification for certain obligations between banks contained in § 204.1(f) of Regulation D and § 217.1(f) of Regulation Q. An IBLP transaction is one through which a bank that has sold Federal funds to another bank, subsequently "sells" or participates out its loan contract to a nonbank third party without notifying the bank that has "purchased" its funds.

(b) The Board's 1970 interpretation regarding Federal funds transactions (§ 217.137) clarifies the meaning of "bank" as that term is used in the exemption for liabilities to banks. Paragraph (b) of that interpretation states that the purpose of requiring that interbank transactions be issued to another bank for its own account, in order to come within the nondeposit exemption, is "to assure that the exemption for liabilities to banks is not used as a means by which nonbanks may arrange through a bank to 'sell' Federal funds to a member bank that are not subject to Regulations D and Q". The Board regards transactions which result in third parties gaining access to the Federal funds interbank loan market as contrary to the interbank exemption contained in § 217.1(f) of Regulation Q, and § 204.1(f) of Regulation D regardless of whether the nonbank third party is a party to the initial interbank transaction or thereafter becomes a participant in the transaction through purchase of all or part of the obligation held by "selling" bank.

(c) The Board regards the notice requirements set out in § 217.137 as applicable to IBLP-type transactions as described herein so that a bank "selling" Federal funds must provide to the purchasing bank (1) notice of its intention, at the time of the initial transaction, to sell or participate out its loan contract to a nonbank third party, and (2) full and prompt notice whenever it (the "selling" bank) subsequently sells or participates out its loan contract to a non-bank third party.

[Reg. Q, 38 FR 35231, Dec. 26, 1973]

§ 217.139 Explanatory statement regarding maximum interest rates on deposits.

(a) The following comments are intended to answer certain questions in connection with changes in the maximum permissible rates of interest that member banks may pay on time and savings deposits under the revision of § 217.6 (Supplement to Regulation Q) that became effective November 24, 1964.

(b) Time certificates of deposit issued prior to November 24, 1964, may be amended by a member bank, if desired, to bear interest up to the new applicable increased maximum rates for any period subsequent to that date. For example, a certificate dated July 1, 1964, maturing July 1, 1965, may be amended to bear interest up to a rate of 4½ percent for any period subsequent to November 24, 1964. (As hereafter noted, the rate would be subject to any restrictions imposed by applicable State law.)

(c) While the revised § 217.6, like the section previously in effect, fixes a maximum rate of interest that may be paid on any time deposit having a maturity of less than 90 days, the section must, of course, be read in connection with the other provisions of this part. A deposit with a maturity of less than 30 days would not constitute a "time deposit" within the meaning of the provisions of § 217.1 and, unless it met the definition of a savings deposit, the deposit would constitute a demand deposit upon which the payment of interest would not be permissible.

(d) The new maximum rates are not retroactive. Consequently, a savings deposit that has remained on deposit for less than 12 months prior to November 24, 1964, may bear interest at a rate up to not more than 4 percent for any period beginning with such date but may not bear interest at a rate in excess of 3½ percent for any period prior to such date, except that, if and when a savings deposit, which was in the bank prior to November 24, 1964, has remained in the bank for a full 12-month period, interest may then be adjusted to provide a yield of not more than 4 percent from the date of the deposit.

(e) It should be borne in mind that State member banks are subject also to any provisions of State law or regulations thereunder that prescribe maximum rates of interest that they may pay on time and savings deposits, and in some cases State-prescribed rates may be less than the maximum rates prescribed by the Board. In addition, under section 24 of the Federal Reserve Act (12 U.S.C. 371), national banks may not pay interest on time or savings deposits at a rate in excess of the highest rate authorized by State law to be paid upon such deposits by State banks or trust companies.

(f) It should be emphasized that § 217.6 prescribes only maximum rates of interest that member banks may pay on time and savings deposits. Member banks are free, of course, to pay lower interest rates if they so desire.

[29 FR 16317, Dec. 5, 1964]

§ 217.140 Reduction in rate of interest on time deposit during period of loan made on security of such deposit.

(a) The opinion of the Board of Governors has been requested with respect to loans by a member bank secured by time deposits in such bank. It is stated that many banks are now paying interest on time deposits at the maximum rate of 4½ percent, and the legal rate of interest in some States for ordinary bank loans is fixed by statute at 6 percent. The specific question is whether the bank may make the loan as § 217.4(e) requires a member bank to charge a rate of interest not less than 2 percent in excess of the rate of interest paid on its time deposit when such deposit is used as security for a loan.

(b) Section 19 of the Federal Reserve Act (12 U.S.C. 371b) prohibits member banks from paying any time deposit before its maturity, except upon such conditions and in accordance with such rules and regulations as may be prescribed by the Board. The above-mentioned § 217.4 (e) is intended to implement the law and prevent evasion thereof. The specified 2 percent penalty is designed to discourage loans on time deposits that would, in effect, enable the depositor to obtain his funds before maturity. For this reason, retention of the 2 percent differential seems desirable.

(c) Since banks in some States are prohibited from charging more than 6 percent on loans, a member bank in such States that pays 4½ percent on a time deposit may not make a loan on such deposit without violating this part. However, there is nothing in the regulation to prevent a bank and its customer from agreeing to the payment of a lesser rate of interest on the deposit while a loan on the deposit is outstanding. Therefore, by agreement, the rate of interest paid on the deposit could be reduced to 4 percent during the period of the loan, with interest on the loan fixed at 6 percent. This would not be a circumvention of this part as the customer would still be paying 2 percent more interest on the loan than he would receive on the deposit. The rate of interest that the bank could pay on the deposit before and after the loan would not be affected.

[30 FR 5574, Apr. 20, 1965]

§ 217.141 Maximum interest rates on multiple maturity time deposits.

The Board has considered the following questions regarding the interpretation of § 217.6 (the Supplement to Regulation Q), as revised July 20, 1966, relating to maximum rates of interest payable to member banks on time and saving deposits:

(a) Under § 217.6, a member bank may pay interest at a rate not exceeding 5 percent on a multiple maturity time deposit made on or after July 20 which is payable only 90 days or more after the date of deposit or 90 days or more after the last preceding date on which it might have been paid; and it may pay interest at a rate not exceeding 4 percent on a multiple maturity deposit which is payable less than 90 days after the date of deposit or less than 90 days after the last preceding date on which it might have been paid. Accordingly, if a deposit is payable, at the depositor's option, either after 90 days' notice or after 30 days' notice, the maximum interest rate permitted under § 217.6 is 4 percent, whether the deposit is paid after 90 days' or 30 days' notice. In this respect, revised § 217.6 makes inapplicable previous interpretations of the Board (e.g., § 217.105) to the effect that, if a deposit has alternative maturities, the maximum interest rate depends upon the alternative actually elected by the depositor.

(b) Question has been raised as to the applicability of revised § 217.6 to time deposits, open account, under contracts entered into prior to July 20, 1966. As stated in revised § 217.6, the 5 percent and 4 percent maximum rates apply to multiple maturity time deposits received on or after July 20, 1966. If, as is usually the case, a contract evidencing a time deposit, open account, provides that the contract may be canceled or terminated by the bank or that the rate of interest is subject to change by the bank on its own initiative or in order to comply with regulations of the Board, the bank must take action as soon as possible to bring the contract within the requirements of revised § 217.6 with respect to deposits received on or after July 20, 1966. In this connection, attention is called to § 217.3(b), which provides that "every member bank shall take such action as may be necessary, as soon as possible consistently with its contractual obligations, to bring all of its outstanding certificates of deposit or other contracts into conformity with the provisions" of this Part 217. Only in the rare case in which a contract entered into prior to July 20, 1966, obligates the bank to accept deposits in the account and pay a specified rate of interest thereon, without any right to modify such obligations, may the bank pay the contract rate of interest on deposits received after that date if such rate is higher than the maximum rate prescribed by § 217.6 for the particular type of multiple maturity deposit.

(c) Question has been raised as to whether a certificate of deposit issued prior to July 20, 1966, providing for automatic renewal every 90 days and specifying a 5 percent interest rate, may be amended after that date to provide for an interest rate in excess of 5 percent. With respect to deposits received before July 20, 1966, § 217.6 permits continued payment of interest at the rate being paid on that date, but it precludes any increase in the rate on such deposits above the maximum prescribed for deposits received on or after that date. Accordingly, the bank could not, under revised § 217.6, pay interest at a rate in excess of 5 percent on or after July 20. (This principle applies also to time deposits, open account.)

(d) Interest credited after July 20, 1956, on multiple maturity time deposits received before that date need not be regarded as a "deposit" received on or after that date but may be assimilated into the underlying pre-July 20 deposits on which the bank may continue to pay the rate of interest specified in the contract.

[31 FR 10315, July 30, 1966]

§ 217.144 5 percent multiple maturity time deposits.

(a) *Interest at the rate of 5 percent.* From time to time the Board of Governors receives inquiries relating to the payment of interest of 5 percent per annum on "multiple maturity time deposits" as defined in § 217.1(g) of Regulation Q. In view of the variety of deposit contracts that have come into use in recent years, the Board considers it advisable to clarify, for banks and their depositors, certain limitations on the authority of a member bank to pay 5 percent interest on funds deposited with it. The underlying principle is that a member bank may pay interest on a multiple maturity time deposit at the rate of 5 percent only if the deposit is payable at intervals of at least 90 days.

(b) *90-day certificate of deposit.* One major category of multiple maturity time deposits is certificates of deposit that (1) mature on a series of specified dates or (2) are automatically renewed at maturity without any action by the depositor. Certificates that mature at specified dates that are 90 days apart and certificates that mature 90 days after the date of issuance and are automatically renewable for successive 90-day periods until the depositor withdraws his funds constitute multiple maturity time deposits in certificate form with the shortest intervals between payment dates that are permissible if interest thereon is to be paid at a rate of 5 percent.

(c) *90-day notice account.* (1) Another major category of multiple maturity time deposits is deposits that are payable only after written notice of withdrawal. Such deposits may be in the form of a passbook or otherwise. Funds may be added to the account either at specified times or whenever the depositor wishes, depending on the terms of the contract.

(2) A member bank may pay interest at the rate of 5 percent on funds in such an account, on two conditions. The first is that funds must not be

withdrawable within 90 days of the date they are deposited. The second is that funds must not be withdrawable less than 90 days after the date of written notice of intention to withdraw. In other words, a member bank may pay 5 percent only on deposits that are payable solely at intervals of at least 90 days.

(3) If a depositor gives 90-days' notice of intention to withdraw and then decides that he will not need the funds at the specified date, he may cancel his notice, either explicitly, or impliedly by a new 90-day notice. He may not, however, retain his right to withdraw at the expiration of the first notice while giving a simultaneous or subsequent notice, unless the latter expires at a date at least 90 days after the expiration of the first.

(d) *90-day notice account coupled with provision for automatic renewal.* (1) Recently, a few banks have offered a 5 percent multiple maturity time deposit contract that authorizes withdrawal by the depositor on more than one basis. For example, the contract may provide that funds received on or before January 1 may be withdrawn March 31 and, with respect to funds not withdrawn on that date, the deposit will be automatically renewed until June 30, and so forth. The contract also provides that funds may be withdrawn on 90 days' notice in writing. In such event, to be consistent with the principle that the depositor may not have access to a 5 percent multiple maturity deposit at intervals of less than 90 days, such a contract should inform the depositor that, when notice is given with respect to all or a portion of the funds on deposit, such notice automatically cancels any other provision for withdrawal that is inconsistent with said principle.

(2) Consequently, if the depositor gives notice on March 1 of his intention to withdraw $1,000 from his account on June 1, the contract should make clear that this automatically cancels his right to withdraw such amount on March 31, since such amount would otherwise be payable at intervals of less than 90 days. Also, his right under the specified maturity (or automatic-renewal maturity) provision to withdraw such amount on June 30 should be suspended, for the same reason. The latter right might be reinstated by the depositor revoking before April 1 his notice of intention to withdraw, since that would be at least 90 days before the specified June 30 maturity. However, the right to withdraw on March 31 could not be reinstated. If it could, the depositor would be in a position to acquire access to the amount involved at intervals of less than 90 days.

(3) As in a "straight" 90-day notice account, the depositor may supersede his notice of intention to withdraw by a subsequent 90-day notice. Again, such notice would have the effect of canceling any other right to withdraw that is inconsistent with the 90-day interval principle.

(e) *Withdrawal "grace period".* There is one exception to the rule that a member bank may not pay 5 percent interest on multiple maturity deposits that are payable at intervals of less than 90 days. A bank may permit a depositor to withdraw his funds within 10 days after a specified maturity even if there is a provision for automatic renewal for 90 days if not withdrawn at said maturity. If he does so no interest may be paid for the period from the maturity date to the date of withdrawal, for during that time the deposit is a "demand deposit", on which payment of interest is prohibited by law. If he does not so withdraw the deposit remains a time deposit with a term running from the maturity date until a subsequent specified date or for a specified number o days.[1]

(f) *"Emergency" withdrawal.* In accordance with § 217.4(d) of Regulation Q, a bank may pay a time deposi before maturity where that is "necessary to prevent great hardship to the depositor", but in that case the depositor forfeits accrued and unpaid (uncredited) interest. Occasions for such withdrawals are exceptional. Unless the depositor is confronted with an actual emergency, a bank may not permit withdrawal of funds before maturity of the deposit or termination of the specified period of notice. If the depositor simply has a need for funds, the bank may extend credit to him on the security of his time deposit, but the rate of interest on such loan must be at least 2 percent per annum in excess of the rate of interest paid on the time deposit.

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[1] A single maturity time deposit also ma be renewed by action of the deposito within 10 days after maturity. In suc event, as in the case of the multiple matur ty time deposit, a member bank may pay interest on the deposit between the maturit date and renewal thereof at the applicabl maximum rate.

(g) *Advertising time deposits.* (1) Some recent advertisements by member banks might be interpreted as offering withdrawal privileges from a 5 percent multiple maturity time deposit at intervals of less than 90 days.

(2) In December 1966, the Board was joined by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board in a statement of principles directed against misleading advertising practices in the solicitation of deposits. The third principle states that "If an advertised rate is payable only on investments or deposits that meet fixed time or amount requirements, such requirements should be stated." An advertisement by a member bank that permits the reader to infer that the bank will pay interest at the rate of 5 percent on funds that may be withdrawn at intervals of less than 90 days is inconsistent with that principle and is regarded by the Board as misleading.

(3) The Board heretofore has refrained, in the definition of "time deposit" in Regulation Q, from prescribing permissible designations for such deposits, and has not objected to banks offering time deposit contracts that are called "savings certificates" or "savings bonds."

However, use of such designations without explanation might have a misleading tendency, because of the public's impression that "savings" in a bank will be paid at any time. Consequently, the greater the possibility that the name given to an account may mislead, the more imperative is the bank's obligation to direct the depositor's attention to the withdrawal restrictions that govern the particular account offered.

[33 FR 9015, June 19, 1968]

§ 217.146 Deposits at foreign branches guaranteed by domestic office of member bank.

For text of this interpretation see § 204.112 of this subchapter.

[35 FR 2768, Feb. 10, 1970]

§ 217.147 Premiums, finders fees, prepayment of interest and payment of interest in merchandise.

For regulatory provisions relating to premiums, finders fees, prepayment of interest and payment of interest in merchandise refer to 12 CFR 1204.109, 1204.110 and 1204.111.

[48 FR 45757, Oct. 7, 1983]

§ 217.148 Information regarding computation of interest on deposits.

Section 217.6(f) of the Board's Regulation Q, relating to payment of interest on deposits, provides:

> (f) *Accuracy of advertising.* No member bank shall make any advertisement, announcement, or solicitation relating to the interest paid on deposits that is inaccurate or misleading or that misrepresents its deposit contracts.

Within the spirit of this provision and in order to avoid misunderstandings on the part of its customers, every member bank should inform the holder of a time or savings account at the time of the opening of such account as to the method that will be used in computing and paying interest on the account, including any provision for nonpayment of interest on deposits made after the beginning of an interest-payment period or withdrawn before the end of such period. In addition, if the bank subsequently makes a change in such method that will be less favorable to a depositor than the previous method, notice of such change should be mailed to each depositor at his last known address.

[35 FR 3751, Feb. 26, 1970]

§ 217.150 Rate payable when higher rate is payable only on short-term deposits.

The Board of Governors considers that the change in the Supplement to Regulation Q, effective June 24, 1970, which permits the payment of interest at any rate on single maturity time deposits of $100,000 or more with maturities of 30 to 89 days (while retaining the existing limitations on interest rates for such deposits maturing in 90 days or more), should be applied as follows:

(a) A member bank may amend the rate paid on a $100,000 certificate with an original maturity of 30 to 89 days issued before June 24, 1970, to pay any interest rate for the period subsequent to that date.

(b) A member bank may not amend the rate paid on a $100,000 certificate with an original maturity of 90 days or more to pay interest thereon for any period at a rate in excess of that specified in the Supplement for such a deposit with the particular maturity. Since such a deposit is not a 30- to 89-day deposit—the only kind of deposit free from interest rate control—it is not affected by the change in the regulation.

(c) A member bank may extend the maturity of a $100,000 certificate which originally provided for a maturity of 30 to 89 days, and pay interest at any rate during the extended term, if the new maturity and is (1) later than the original maturity (2) 30 to 89 days from the date of the extension.

(d) A member bank may not extend the term of a certificate originally issued for 90 days or more and pay interest on the deposit at a rate in excess of that applicable to the original deposit, even if the new maturity meets the conditions in the preceding paragraph. This does not apply, of course, to extension or renewal at maturity.

(e) A member bank may pay interest at any rate on a certificate originally issued in an amount less than $100,000 to which the depositor adds sufficient funds to increase the deposit to $100,000 or more, if and only if (1) the original maturity of the certificate is 30 to 89 days, and (2) the maturity date is 30 to 89 days after the date of the addition of such funds.

(f) Member banks may not make use of contracts for future deposits to permit a depositor to commit his funds for more than 89 days and obtain interest at a rate in excess of that applicable to a deposit with a longer maturity. For example, a bank and its depositor might agree on August 1, 1970, that the depositor will deposit, on that date and again on October 20 (80 days later), $100,000 for 80 days, on which the bank will pay interest at the rate of 10 percent. Such an arrangement would be an effort to evade the purposes of the regulation, which permits payment of rates of interest without legal restriction only on deposits of 30 to 89 days. The Board considers that the substance of such a transaction would be a deposit for 160 days. (If the depositor has an option, by contract or understanding, to withdraw funds at the end of the first 80 days or to leave them on deposit for the second 80 days, the deposit would be subject to the limitations of the Supplement to Regulation Q applicable to multiple maturity deposits payable at intervals of less than 90 days.) The Board's view would be the same even though the agreements—formal or informal—were entered into at different times, if they were so related as to be, in reality, a single arrangement that commits the bank and its depositor for 90 days or longer.

[35 FR 11780, July 23, 1970]

§ 217.151 Payment and computation of interest on time and savings deposits.

The Board has expressed the following views relating to the payment and computation of interest on deposits.

(a) The maximum rate of simple interest that a member bank may pay on a deposit is established by § 217.7 of Regulation Q. In January 1970, the Board established certain rates on deposits with a maturity of "1 year or more". To qualify for a rate that may be paid on such a deposit, the deposit must not mature before 1 full year—365 or 366 days as the case may be—from the date of deposit.[1]

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[1] In the area of consumer time deposits (deposits in denominations of less than $100,000), under § 217.7 in effect in December, 1970, a member bank may pay 5 per cent interest on a deposit that matures 3 months from the date of deposit. If the date of deposit is in February, such deposit will mature in 89 days. The Board regards this de minimis departure from the 90-day inter-

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(b) The formula for the computation of simple interest is $A=P\ (1+RT)$ where A is the final amount, P is the amount on which interest is computed, R is the annual rate of simple interest and T is the time period. Effective January 1, 1971, § 217.3(e) of Regulation Q was amended to authorize the use of 360 or 365 (or 366 in a leap year) as the denominator of a fraction in which the numerator is the actual number of days the deposit earns interest. For example, a bank would be permitted to consider the time factor on a 295-day deposit as $^{295}/_{365}$ or $^{295}/_{360}$. On a 360-day deposit, the fraction could be $^{360}/_{365}$ or $^{360}/_{360}$; it could not be $^{365}/_{360}$. Additionally, § 217.3(e) authorizes in the numerator of the time fraction the use of 30 days (or multiples thereof) for deposits of 1 month (or corresponding multiples thereof). For example, on a deposit made February 1 for 1 month, the time fraction could be stated as $^{30}/_{360}$ or $^{30}/_{365}$, or $^{28}/_{360}$ or $^{28}/_{365}$.

(c) Section 217.3(a) provides that the effects of compounding may be disregarded in determining whether a member bank is paying interest in excess of the rates established in § 217.7. The formula for continuous compounding is $A=Pe^{RT}$ where A is the final amount, P is the amount on which interest is compounded, e is the base for Napierian or natural logarithms, R is the annual rate of simple interest, and T is the time period. T may be expressed as a fraction in which the numerator is the actual number of days the funds earn interest and the denominator may be either 360, or 365, or, in the case of a leap year, 366. As is permitted in simple interest calculations, a bank may consider each month as having 30 days.

(d) The formula for other than continuous compounding is $A=P(1+R/M)^N$ where A is the final amount, P is the amount on which interest is compounded, R is the annual rate of simple interest, M is the number of compounding periods in a year, and N is the actual number of periods for which interest is compounded. When compounding interest quarterly, $M=4$; compounding monthly, $M=12$; and compounding daily, $M=360$, 365, or 366. For example, a bank may compound 5 percent interest daily on a $10,000 deposit for 91 days in accordance with either of the following:

$A=\$10,000[1+(.05/360)]^{91}$ or $10,127.18; or
$A=\$10,000[1+(.05/365)]^{91}$ or $10,125.43.

(Interprets and applies 12 U.S.C. 371b and 461)

[Reg. Q, 35 FR 19663, Dec. 29, 1970]

§ 217.152 Withdrawals of savings deposits by telephone.

(a) The Board of Governors has been asked to reconsider its view, adopted in 1936, that a member bank may not permit a depositor to withdraw funds from his savings account by means of a telephone or other oral order (1936 Fed. Res. *Bulletin* 624). That position was based upon the Board's concern for member bank security and also upon its concern that unrestricted telephone access to savings accounts might lead depositors to treat such accounts as extensions of their checking accounts and destroy the distinction between the accounts.

(b) The Board has studied the telephone withdrawal systems currently being developed by several member banks and feels that the security and record-keeping devices made possible by new technology and incorporated into these systems will keep errors and unauthorized use to a minimum.

(c) The Board recognizes that the telephone has become an accepted medium for transmitting financial data and that the telephone merely provides the customer with an additional method of communicating instructions regarding his account to his bank. In fact, numerous other depository institutions including nonmember commercial banks and savings and loan associations have for some time been permitted to offer telephone withdrawal services.

Therefore, the Board withdraws its policy against the offering of telephone withdrawal services while advising member banks to safeguard such

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val required for payment of interest at 5 per cent (12 CFR 217.144) as justified on the grounds of mathematical simplicity.

transfers with proper procedures and internal control.

(Interprets and applies 12 U.S.C. 371b)

[40 FR 16831, Apr. 15, 1975]

§ 217.153 Serial, sinking fund redemption, and amortized issues as capital.

For text of this interpretation see 12 CFR 204.119.

[41 FR 26201, June 25, 1976]

§ 217.155 Pooling of funds to obtain higher interest rates.

(a) The Board of Governors has reviewed its previous rulings concerning acceptance of pooled funds by member banks. Under these rulings, the Board had expressed the view that a member bank that paid a higher rate on a deposit that it knew or had reason to know resulted from funds aggregated (pooled) principally for the purpose of obtaining a higher rate of interest would be acting contrary to the spirit of Regulation Q. This interpretation replaces these prior Board rulings that had been issued in the form of letter opinions in 1968 and 1970.

(b) The Board has determined that member banks accepting and paying higher rates of interest on pooled deposits from depositors who themselves have pooled their funds whether or not the bank knows or has reason to know that such funds have been pooled would not be violating Regulation Q. However, member banks are not permitted to solicit, advise or encourage depositors to pool funds for the purpose of paying higher interest rates. In addition, member banks are not permitted to solicit deposits from customers on the basis that the funds will be pooled by the bank for the purpose of paying higher interest rates. The Board believes that participation by member banks in encouraging or establishing pooling arrangements constitutes a device to avoid interest rate limitations. The Board further believes that adopting this new policy will facilitate the administration of Regulation Q interest rate ceilings.

(c) The Board would regard any advertisement, announcement or solicitation by a member bank indicating that it will accept pooled funds or that funds can be pooled to obtain higher rates as a violation of Regulation Q. For example, printed and broadcast advertisements stating that depositors can achieve higher interest rates by pooling their funds with others and depositing them in the bank would be inappropriate. In addition, in responding to inquiries from depositors concerning available deposit instruments and rates, member banks are not permitted to suggest the practice of pooling as a means of meeting minimum denomination requirements. Similarly, any advertisement, announcement or solicitation, written or oral, by a member bank discussing a policy, practice, program, or procedure for accepting pooled deposits would not be permitted. If, for example, two depositors come into a member bank on their own with checks of $5,000 each seeking to purchase jointly one $10,000 minimum denomination money market time deposit, the bank is permitted to accept such funds in the form of a money market time deposit and to pay the ceiling rate on such deposits. However, a member bank could not arrange to introduce, directly or indirectly, separate depositors that are seeking to pool their funds.

(d) This interpretation is not intended to affect other well-established practices which involve pooling of funds such as money market mutual funds, trust department aggregation of temporarily idle balances of *bona fide* fiduciary accounts, or combination of funds held in escrow by a person acting in a fiduciary or custodial capacity. In addition, member banks are expected to report interest earned by depositors on pooled funds in accordance with the regulations of the Internal Revenue Service.

[44 FR 32353, June 6, 1979]

§ 217.156 Application of Regulation Q to fixed rate obligations issued by the parent bank holding company of a member bank.

(a) The Board has received a request for an interpretation that §§ 217.1(h) and 217.7(h) of Regulation Q (12 CFR 217.1(h) and 217.7(h)) do not apply to small denomination *fixed rate* obligations with limited redemption features issued by bank holding companies.

The obligations in question generally have a stated maturity of from 10 to 25 years, but are redeemable at the option of the holder subject to limitations as to the amount that any holder may redeem in any year (usually $25,000) and as to the aggregate amount that may be redeemed in any year (usually 5 per cent of the original principal amount of the issue).

(b) Sections 217.1(h) and 217.7(h) were adopted by the Board effective March 14, 1980, and apply Regulation Q interest rate ceilings to certain obligations issued by a member bank's parent bank holding company. Section 217.1(h) specifically provides that the "deposits" of a member bank includes an obligation that is: (1) Issued in a denomination of less than $100,000; (2) required to be registered with the SEC; (3) issued or guaranteed in whole or in part by the member bank's parent which is a bank holding company (regardless of the use of the proceeds); and (4) issued with an original maturity or redemption period of four years or less. Section 217.7(h) specifies the ceiling rates of interest payable on such obligations.

Sections 217.1(h) and 217.7(h) were adopted in view of the Board's concern of the potential adverse impact the widespread issuance by bank holding companies of principally floating rate notes with a redemption feature aimed at the retail market was likely to have on deposit flows among depository institutions. The Board's concern was based on its belief that such obligations, which typically are issued at rates substantially in excess of Regulation Q ceiling rates payable on time deposits of comparable maturity, were competitive with consumer deposits issued by depository institutions.

(c) The Board believes that the obligations in question are distinguished from those that were the subject of the Board's principal concerns in two ways. First, they carry a fixed rate of interest; second, the amount that may be redeemed in any year is limited to 5 per cent. The Board regards this limited redemption feature as having an effect similar to a sinking fund which ensures that repayments are not concentrated, while at the same time preserving the long-term nature of the obligation. In view of these considerations, the Board does not believe that such obligations would be a major source of competition for deposits issued by depository institutions.

(d) Accordingly, the Board has determined that obligations issued by a member bank's parent which is a bank holding company will not be regarded as having a redemption period of four years or less under § 217.1(h) and, thus, will not be subject to the interest rate limitations specified in § 217.7(h), if they have the following characteristics: (1) The obligations possess a *fixed rate* of interest that does not change during the life of the obligation; (2) no more than 5 per cent of the original principal amount of the issue may be redeemed at the option of the holders in any one year; (3) no more than $25,000 per holder may be redeemed in any one year; and (4) the obligations possess a minimum stated maturity of five years or more. The five year minimum maturity requirement (i.e., 25 per cent higher than the current more than four year requirement) offsets the possible 25 per cent maximum reduction (5 per cent per year for five years) in the amount outstanding after five years and is regarded as necessary to preserve the objective of the four year minimum maturity requirement in § 217.1(h). The Board also believes that in order to ensure that potential purchasers are aware of the limited nature of the redemption feature, those limitations should be prominently disclosed in any materials or solicitations concerning such obligations.

[45 FR 72630, Nov. 3, 1980]

§ 217.157 Eligibility for NOW Accounts.

(a) *Background.* (1) Effective December 31, 1980, the Consumer Checking Account Equity Act of 1980 (Title III of the Depository Institutions Deregulation and Monetary Control Act of 1980; Pub. L. 96-221; 94 Stat. 146) ("Act") authorizes depository institutions nationwide to offer interest-bearing checking (NOW) accounts to depositors where the "entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit." (12 U.S.C. 1832(a)(2)). The purpose of the Act is to extend the availability of NOW accounts throughout the nation. Previously, as an experiment, NOW accounts were authorized to be offered by depository institutions only in New England, New York, and New Jersey.

(2)(i) The NOW account experiment established by Congress in 1973 did not specify the types of customers that could maintain NOW accounts. As a result, the rules of the Federal Reserve and Federal Deposit Insurance Corporation specified the types of depositors eligible to maintain NOW accounts at member and insured nonmember banks. In enacting the NOW account provision in 1980, Congress adopted virtually the same language concerning NOW account eligibility that previously had been adopted by the Board and the Federal Deposit Insurance Corporation with regard to the types of customers permitted to maintain NOW accounts in institutions located in the NOW account experiment region. (12 CFR 217.1(e)(3) and 12 CFR 329.1(e)(2)). This definition was based upon long-standing regulatory provisions concerning eligibility criteria for savings deposits.

(ii) Effective October 15, 1982, section 706 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320; 96 Stat. 1540) specifically extended NOW account eligibility to funds deposited by governmental units.

(3) In response to many requests for rulings since the new law was enacted, the Board has determined to clarify the types of entities that may maintain NOW accounts at member banks.

(b) *Individuals.* (1) Any individual may maintain a NOW account regardless of the purposes that the funds will serve. Deposits of an individual used in his or her business may be held in a NOW account, since it is impracticable to distinguish between funds used by an individual in his or her business and funds used for personal purposes. However, other entities organized or operated to make a profit may not maintain NOW accounts regardless of whether they are corporations, partnerships, associations, business trusts, or other organizations.

(2) Under current provisions, funds held in a fiduciary capacity (either by an individual fiduciary or by a corporate fiduciary such as a bank trust department), including those awaiting distribution or investment, may be held in the form of NOW accounts if the beneficiaries are individuals. The Board believes that such a classification should continue since fiduciaries are required to invest even temporarily idle balances to the greatest extent feasible in order to responsibly carry out their fiduciary duties. The availability of NOW accounts provides a convenient vehicle for providing a short-term return on temporarily idle trust funds of individuals.

(3) Pension funds, escrow accounts, security deposits, and other funds held under various agency agreements may also be classified as NOW accounts if the entire beneficial interest is held by individuals. The Board believes that these accounts are similar in nature to trust accounts and should be accorded identical treatment. Therefore, such funds may be regarded as eligible for classification as NOW accounts.

(c) *Nonprofit organizations.* (1) Under the Act, a nonprofit organization that is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes may maintain a NOW account. The Board regards the following kinds of organizations as eligible for NOW accounts under this standard if they are not operated for profit:

(i) Organizations described in section 501(c) (3) through (13), and (19) of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 501(c) (3) through (13) and (19)); and

(ii) Homeowners and condominium owners associations described in section 528 of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 528), including housing cooperative associations that perform similar functions.

(2) All organizations that are operated for profit are not eligible to maintain NOW accounts at member banks.

(3) The following types of organizations described in the cited provisions

of the Internal Revenue Code are among those not eligible to maintain NOW accounts:

(i) Credit unions and other mutual depository institutions described in section 501(c)(14);

(ii) Mutual insurance companies described in section 501(c)(15);

(iii) Crop financing organizations described in section 501(c)(16);

(iv) An organization created to function as part of a qualified group legal services plan described in section 501(c)(20);

(v) Farmers' cooperatives described in section 521; or

(vi) Political organizations described in section 527.

(d) *Governmental units.* Governmental units are generally eligible to maintain NOW accounts at member banks. NOW accounts may consists of funds in which the entire beneficial interest is held by the United States, any State of the United States, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

(e) *Grandfather provision.* In order to avoid unduly disrupting account relationships, a NOW account established at a member bank on or before August 31, 1981, that represents funds of a nonqualifying entity that previously qualified to maintain a NOW account may continue to be maintained.

[46 FR 46899, Sept. 23, 1981, as amended at 47 FR 54759, Dec. 6, 1982]

§ 217.158 Sale of Federal funds by investment companies or trusts in which the entire beneficial interest is held exclusively by depository institutions.

For text of this interpretation see § 204.123 of this subchapter.

[47 FR 8988, Mar. 3, 1982]

§ 217.159 Member bank participation in the secondary market for its own time deposits.

(a) Effective May 1, 1982, the Depository Institutions Deregulation Committee ("DIDC") authorized depository institutions, including member banks, to issue 3½ year or more time deposits not subject to an interest rate ceiling and 91-day, $7,500 time deposits with an interest rate ceiling tied to the most recent 91-day Treasury bill rate. Such deposits may be issued in negotiable form, thereby facilitating the ability of depositors to liquidate the deposit through sales on the secondary market. Member banks have asked the extent to which they may participate in, or facilitate, the secondary market for such time deposits that they have issued.

(b) The Board of Governors believes that a fundamental principle behind the penalty for payment of a time deposit prior to maturity is to distinguish time deposits from demand deposits. Under section 19(i) of the Federal Reserve Act (12 U.S.C. 371a), member banks are prohibited from paying interest on demand deposits. In addition, the early withdrawal penalty is intended to discourage depositors from withdrawing time deposit funds prior to maturity, thereby enabling member banks to better plan their asset and liability structures. The question of participation by a member bank in secondary market transactions involving its own time deposits raises the issue of whether such activity would circumvent the purposes intended to be served by the early withdrawal penalty.

(c) *Direct participation.* (1) The Board has concluded that if a member bank or one of its affiliates purchases a time deposit issued by the bank, the member bank should be regarded as having paid the deposit prior to maturity. The effect of the transaction is that the member bank has cancelled a liability as opposed to having acquired an asset for its portfolio. Thus, the member bank is required to impose the early withdrawal penalty on the party from whom it purchases the instrument. With respect to an affiliate making the purchase, the effect of the penalty rule could be easily circumvented by redemption of the time deposit by the affiliate at the member bank. Even if an early withdrawal penalty is imposed, because of the affiliate relationship, there likely would be no impact on the consolidated earnings of the entity comprising the member bank and the affiliate redeeming the deposit. Consequently, the Board believes that the purchase of a time deposit issued by a member bank by the bank itself or by one of its affiliates constitutes a payment of a deposit prior to maturity.

(2) Many member banks engage in secondary market activities in negotiable time certificates of deposit of $100,000 or more ("CDs"). In many instances, sales and purchases of these CDs are negotiated primarily by rate and maturity and without regard to the specific identity of the issuing bank. In some cases a member bank might purchase a block of CDs of various obligors and later discover one of the CDs purchased to be its own. Since this situation appears to be one in which the member bank has inadvertently purchased its own deposit, the Board believes that the member bank should not be required to impose an early withdrawal penalty; however, it must sell the CD in the secondary market as soon as possible after it has been received.

(d) *Participation as a "broker."* (1) The Board believes that it is permissible for a member bank to facilitate the secondary market for its own small denomination time deposits by arranging to find a purchaser for a time deposit that a customer is trying to sell. In such instances, the bank will not be paying out any of its own funds and the depositor does not have a guarantee that the member bank will actually be able to find a buyer. Member banks may establish and advertise arrangements whereby an unaffiliated third party agrees in advance to purchase time deposits issued by the bank. Such transactions would not be inconsistent with the purposes that the early withdrawal penalty is intended to serve. However, the Board believes that an arrangement established wherein a member bank pays a fee to a third party that purchases negotiable time deposits from the bank's depositors constitutes a device to avoid the early withdrawal penalty, and, thus, is prohibited. In addition any interim financing provided to such a third party by a member bank in connection with its secondary market activity involving the bank's small denomination time deposits must be made substantially on the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions with other similarly situated persons and may not involve more than the normal risk of repayment or present other unfavorable features.

(2) A member bank may enter into an arrangement with an unaffiliated third party wherein the third party agrees to stand ready to purchase time deposits held by the member bank's customers. However, the Board is of the opinion that a member bank may not establish reciprocal arrangements with another depository institution for purchases of each other's time deposits of less than $100,000 held by customers. The Board believes that arrangements with such parties present serious potential for circumvention of the early withdrawal penalty rule and the purposes that it is designed to serve. In this regard, arrangements entered into with another depository institution to purchase time deposits of the other institution's customers could give rise to significant contingent liabilities for the entities agreeing to purchase the deposits. While the institution issuing the deposit might not be impaired in planning its asset and liability structure, the institution agreeing to purchase deposits from the customers of the issuing institution could be so affected. Such arrangements could have an adverse effect on the safety and soundness of member banks and other depository institutions.

[47 FR 37878, Aug. 27, 1982]

§ 217.160 Loan upon the security of a time deposit.

(a) Section 217.4(f) of Regulation Q (12 CFR 217.4(f)) provides that a member bank may make a loan to a depositor upon the security of his or her time deposit as long as the rate of interest on the loan is at least 1 percentage point above the rate being paid on the deposit. The purpose of this provision is to ensure that the rules regarding the maintenance of interest rate ceilings are not violated, including rules that require penalties for early withdrawals of time deposits.

(b) Effective October 5, 1982, the Board amended Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) to define as transaction accounts, time deposits issued in connection with an arrangement that permits the depositor to obtain credit, directly or indirectly, through the drawing of a check, draft or similar device that can be used for the purpose of making payments or transfers to third persons or others. (47 FR 44992) In considering this amendment, the Board concluded that some of these arrangements are structured using a loan secured by a time deposit with terms providing for interest on the loan to be charged at 1 percentage point over the annual *simple* rate being paid on the deposit when the *effective* rate on the deposit is higher due to the effects of compounding. For example, after daily compounding on a 365/360 basis, a 12 per cent annual simple rate being paid on a deposit results in an annual effective rate of 12.935 per cent. This result has the effect of minimizing the impact of the required 1 percentage point differential. In order to preserve the effectiveness of § 217.4(f) of Regulation Q, the Board believes the interest rate charged (on an annual basis) on a loan secured by a time deposit must be at least 1 percentage point above the annual *effective* rate paid on the time deposit, taking into account the effects of compounding of the interest on the deposit. Thus, in the example, provided above, the minimum annual rate that may be charged on a loan secured by the time deposit would be 13.935 per cent, which is 1 percentage point above the 12.935 annual effective rate being paid on the deposit. The Board has been advised that a similar position has been adopted by the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board.

(c) In order not to disadvantage depositors who currently have such loans outstanding or agreements for such loans, this interpretation is applicable to loans secured by a time deposit that are made, extended or renewed on or after October 18, 1982, or agreements for such loans entered into on or after October 18, 1982.

[47 FR 47231, Oct. 25, 1982]

§ 217.161 Repurchase agreements involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and Federal agency securities.

(a) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96-221) imposes federal reserve requirements on transaction accounts and nonpersonal time deposits held by depository institutions. The Board is empowered under the Act to determine what types of obligations shall be deemed a deposit (12 U.S.C. 461). Regulation D—Reserve Requirements of Depository Institutions exempts from the definition of "deposit" those obligations of a depository institution that arise from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States government or any agency thereof that the depository institution is obligated to repurchase (12 CFR 204.2(a)(1)(vii)(B)). A parallel exemption in Regulation Q—Interest on Deposits exempts from the definition of "deposit" obligations that evidence an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase (12 CFR 217.1(f)(2)).

(b) The National Bank Act provides that a national bank may purchase for its own account investment securities under limitations and restrictions as the Comptroller may prescribe (12 U.S.C. 24, ¶ 7). The statute defines investment securities to mean marketable obligations evidencing indebtedness of any person in the form of bonds, notes, and debentures. The Act further limits a national bank's holdings of any one security to no more than an amount equal to 10 percent of the bank's capital stock and surplus. However, these limitations do not apply to obligations issued by the United States, general obligations of any state and certain obligations of federal agencies. In addition, generally a national bank is not permitted to purchase for its own account stock of any corporation. These restrictions also apply to state member banks (12 U.S.C. 335).

(c) The Comptroller of the Currency has permitted national banks to purchase for their own accounts shares of open-end investment companies that are purchased and sold at par (i.e., money market mutual funds) provided the portfolios of such companies consist solely of securities that a national bank may purchase directly (Banking Bulletin B-83-58). The Board of Governors has permitted state member banks to purchase, to the extent permitted under applicable state law, shares of money market mutual funds ("MMMF") whose portfolios consist solely of securities that the state member bank may purchase directly (12 CFR 208.123).

(d) The Board has determined that an obligation arising from a repurchase agreement involving shares of a MMMF whose portfolio consists wholly of securities of the United States government or any agency thereof[3] would not be a "deposit" for purposes of Regulations D and Q. The Board believes that a repurchase agreement involving shares of such a MMMF is the functional equivalent of a repurchase agreement directly involving United States government or agency obligations. A purchaser of shares of a MMMF obtains an interest in a *pro rata* portion of the assets that comprise the MMMF's portfolio. Accordingly, regardless of whether the repurchase agreement involves United States government or agency obligations directly or shares in a MMMF whose portfolio consists entirely of United States government or agency obligations, an equitable and undivided interest in United States and agency government obligations is being transferred. Moreover, the Board believes that this interpretation will further the purpose of the exemption in Regulations D and Q for repurchase agreements involving United States government or federal obligations by enhancing the market for such obligations.

[50 FR 13012, Apr. 2, 1985]

PART 218—RELATIONS WITH DEALERS IN SECURITIES UNDER SECTION 32, BANKING ACT OF 1933

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AUTHORITY: Sec. 32, 48 Stat. 194, as amended; 12 U.S.C. 78, unless otherwise noted. §§ 218.101 to 218.114 also issued under sec. 11, 38 Stat. 262; 12 U.S.C. 248.

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[3] The term "United States government or any agency thereof" as used herein shall have the same meaning as in § 204.2(a)(1)(vii)(B) of Regulation D, 12 CFR 204.2(a)(1)(vii)(B).

Regulations

§ 218.1 Prohibitions.

Under section 32 of the Banking Act of 1933 (49 Stat. 709; 12 U.S.C. 78), except as stated in § 218.2, no officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, under writing, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, can legally be at the same time an officer, director, or employee of any member bank of the Federal Reserve System.[1]

[Reg. R. Jan. 4, 1936]

§ 218.2 Exemptions.

Pursuant to the authority vested in it by section 32, the Board of Governors of the Federal Reserve System hereby grants permission[2] for any officer, director, or employee of any member bank of the Federal Reserve System, unless otherwise prohibited,[3] to be at the same time an officer, director, or employee of any corporation or unincorporated association, a partner or employee of any partnership, or an individual engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of only such securities as national banks may lawfully underwrite and deal in pursuant to paragraph Seventh of section 5136, Revised Statutes (12 U.S.C. 24).[4]

[34 FR 18417, Nov. 19, 1969]

§ 218.3 Amendments.

The right to alter, amend, or repeal this part, in whole or in part, is expressly reserved.

[Reg. R. Jan. 4, 1936]

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[1] Therefore, by its terms, section 32 does not apply—

(a) To a person who is not an officer, director, or employee of a member bank of the Federal Reserve System;

(b) To a person (1) who is not an officer, director, or employee of a corporation or unincorporated association primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, (2) who is not a partner or employee of a partnership primarily so engaged, and (3) who is not, in his individual capacity, primarily so engaged.

A broker who is engaged solely in executing orders for the purchase and sale of securities on behalf of others in the open market is not engaged in the business referred to in section 32.

[2] Under section 32, as amended effective Jan. 1, 1936 (49 Stat. 709; 12 U.S.C. 78), the Board is authorized to except limited classes of relationships from the prohibitions of the statute, under certain conditions; but the Board can make such exceptions only by general regulations and is not authorized to issue individual permits.

[3] Section 8 of the Clayton Act (38 Stat. 732, 49 Stat. 718; 15 U.S.C. 19) is applicable in certain circumstances to interlocking relationships between member banks and private bankers, and other banks, banking associations, savings banks and trust companies. See Part 212 of this chapter.

Section 17(c) of the Public Utility Act of 1935 (49 Stat. 831; 15 U.S.C. 79q (c) is applicable in certain circumstances to interlocking relationships between banks and private bankers (and corporations owned by banks and private bankers), and public utility companies and public utility holding companies. Inquiries regarding this section should be addressed to the Securities and Exchange Commission and not to the Board of Governors of the Federal Reserve System.

Section 10(c) of the Investment Company Act of 1940 (54 Stat. 806; 15 U.S.C. 80a-10 (c)) is applicable in certain circumstances to interlocking relationships between banks and registered investment companies. Inquiries regarding this section should be addressed to the Securities and Exchange Commission and not to the Board of Governors of the Federal Reserve System.

Section 305(b) of the Federal Power Act (49 Stat. 856; 16 U.S.C. 825d(b) is applicable in certain circumstances to interlocking relationships between public utility companies and banks and bankers that are authorized by law to underwrite or participate in the marketing of securities of a public utility. Inquiries regarding this section should be addressed to the Federal Power Commission and not to the Board of Governors of the Federal Reserve System.

[4] Made applicable to State member banks by paragraph 20 of section 9 of the Federal Reserve Act (12 U.S.C. 335).

INTERPRETATIONS

§ 218.101 Service of open-end investment company.

An open-end investment company is defined in section 5(a)(1) of the Investment Company Act of 1940 as a company "which is offering for sale or has outstanding any redeemable security of which it is the issuer." Section 2(a)(31) of said act provides that a "redeemable security" means "any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof."

It is customary for such companies to have but one class of securities, namely, capital stock, and it is apparent that the more or less continued process of redemption of the stock issued by such a company would restrict and contract its activities if it did not continue to issue its stock. Thus, the issuance and sale of its stock is essential to the maintenance of the company's size and to the continuance of operations without substantial contraction, and therefore the issue and sale of its stock constitutes one of the primary activities of such a company.

Accordingly, it is the opinion of the Board that if such a company is issuing or offering its redeemable stock for sale, it is "primarily engaged in the issue * * * public sale, or distribution, * * * of securities" and that section 32 of the Banking Act of 1933, as amended, prohibits an officer, director or employee of any such company from serving at the same time as an officer, director or employee of any member bank. It is the Board's view that this is true even though the shares are sold to the public through independent organizations with the result that the investment company does not derive any direct profit from the sales.

If, however, the company has ceased to issue or offer any of its stock for sale, the company would not be engaged in the issue or distribution of its stock, and, therefore, the prohibition contained in section 32 would be inapplicable unless the company were primarily engaged in the underwriting, public sale or distribution of securities other than its own stock.

[16 FR 4963, May 26, 1951]

§ 218.102 Director serving member bank and closed-end investment company being organized.

(a) The Board has previously expressed the opinion (§ 218.101) that section 32 of the Banking Act of 1933 (12 U.S.C. 78) is applicable to a director of a member bank serving as a director of an open-end investment company, because the more or less continued process of redemption of the stock issued by such company makes the issuance and sale of its stock essential to the maintenance of the company's size and to the continuance of operations, with the result that the issuance and sale of its stock constitutes one of the primary activities of such a company. The Board also stated that if the company had ceased to issue or offer any of its stock for sale, the company would not be engaged in the issuance or distribution of its stock and therefore the prohibitions of section 32 would not be applicable. Subsequently, the Board expressed the opinion that section 32 would not be applicable in the case of a closed-end investment company.

(b) The Board has recently stated that it believed that a closed-end company which was in process of organization and was actively engaged in issuing and selling its shares was in the same position relative to section 32 as an open-end company, and that the section would be applicable while this activity continued.

[25 FR 3464, Apr. 21, 1960]

§ 218.103 Service as officer, director, or employee of licensee corporation under the Small Business Investment Act of 1958.

(a) The Board of Governors has been requested to express an opinion whether § 218.1 would prohibit an officer, director, or employee of a member bank from serving at the same time as an officer, director, or employee of a Licensee corporation under the Small

Business Investment Act of 1958 (15 U.S.C. 661 et seq.). It is understood that a Licensee would be authorized to engage only in the activities set forth in the statute, namely, to provide capital and long-term loan funds to small business concerns.

(b) In the opinion of the Board, a corporation engaged exclusively in the enumerated activities would not be "primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities." Accordingly, the prohibition of § 218.1 would not apply to serving as an officer, director, or employee of either a small business investment company organized under the Small Business Investment Act of 1958, or an investment company chartered under the laws of a State solely for the purpose of operating under the Small Business Investment Act of 1958.

[25 FR 4427, May 19, 1960]

§ 218.104 Service of member bank and real estate investment company.

(a) The Board recently considered two inquiries regarding the question whether proposed real estate investment companies would be subject to the provisions of sections 20 and 32 of the Banking Act of 1933 (12 U.S.C. 377 and 78). These sections relate to affiliations between member banks and companies engaged principally in the issue, flotation, underwriting, public sale or distribution of stocks, bonds, or similar securities, and interlocking directorates between member banks and companies primarily so engaged. In both instances the companies, after their organization, would engage only in the business of financing real estate development or investing in real estate interests, and not in the type of business described in the statute. However, each of the companies, in the process of its organization, would issue its own stock. In one instance, it appeared that the stock would be issued over a period of from 30 to 60 days; in the other instance it was stated that the stock would be sold by a firm of underwriters and that distribution was expected to be completed in not more than a few days.

(b) On the basis of the facts stated, the Board concluded that the companies involved would not be subject to sections 20 and 32 of the Banking Act of 1933, since they would not be principally or primarily engaged in the business of issuing or distributing securities but would only be issuing their own stock for a period ordinarily required for corporate organization. The Board stated, however, that if either of the companies should subsequently issue additional shares frequently and in substantial amounts relative to the size of the company's capital structure, it would be necessary for the Board to reconsider the matter.

(c) Apart from the legal question, the Board noted that an arrangement of the kind proposed could involve some dangers to an affiliated bank because the relationship might tend to impair the independent judgment that should be exercised by the bank in appraising its credits and might cause the company to be so identified in the minds of the public with the bank that any financial reverses suffered by the company might affect the confidence of the public in the bank.

(d) Because of the foregoing conclusion that the companies would not be subject to sections 20 and 32, it seems advisable to clarify § 218.102, in which the Board took the position that a closed-end investment company which was in process of organization and was actively engaged in issuing and selling its shares was subject to section 32 as long as this activity continued. That interpretation should be regarded as applicable only where the circumstances are such as to indicate that the issuance of the company's stock is a primary or principal activity of the company. For example, such circumstances might exist where the initial stock of a company is actively issued over a period of time longer than that ordinarily required for corporate organization, or where, subsequent to organization, the company issues its own stock frequently and in substantial amounts relative to the total amount of shares outstanding.

[26 FR 868, Jan. 28, 1961]

§ 218.105 Serving as director of member bank and corporation selling own stock.

(a) The Board recently considered the question whether section 32 of the Banking Act of 1933 (12 U.S.C. 78) would be applicable to the service of a director of a corporation which planned to acquire or organize, as proceeds from the sale of stock became available, subsidiaries to operate in a wide variety of fields, including manufacturing, foreign trade, leasing of heavy equipment, and real estate development. The corporation had a paid-in capital of about $60,000 and planned to sell additional shares at a price totaling $10 million, with the proviso that if less than $3 million worth were sold by March 1962, the funds subscribed would be refunded. It thus appeared to be contemplated that the sale of stock would take at least a year, and there appeared to be no reason for believing that, if the venture proved successful, additional shares would not be offered so that the corporation could continue to expand.

(b) The Board concluded that section 32 would be applicable, stating that although § 218.102, as clarified by § 218.104, related to closed-end investment companies, the rationale of that interpretation is applicable to corporations generally.

[26 FR 2456, Mar. 23, 1961]

§ 218.106 No exception granted a special or limited partner.

(a) The Board has been asked on several occasions whether section 32 of the Banking Act of 1933 (12 U.S.C. 78) is applicable to a director, officer, or employee of a member bank who is a special or limited partner in a firm primarily engaged in the business described in that section.

(b) Since the Board cannot issue an individual permit, it can exempt a limited or special partner only by amending Part 218 (Regulation R). After the statute was amended in 1935 so as to make it applicable to a "partner," the Board carefully considered the desirability of making such an exception. On several subsequent occasions it has reconsidered the question. In each instance the Board has decided that in view of a limited partner's interest in the underwriting and distributing business, it should not make the exception.

[27 FR 7954, Aug. 10, 1962]

§ 218.107 Serving member bank and investment advisor with mutual fund affiliation.

(a) The opinion of the Board of Governors of the Federal Reserve System has been requested with respect to service as vice president of a corporation engaged in supplying investment advice and management services to mutual funds and others ("Manager") and as director of a member bank.

(b) Section 32 of the Banking Act of 1933 (12 U.S.C. 78), forbids any officer, director, or employee of any corporation "primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities * * *" to serve at the same time as an officer, director, or employee of a member bank.

(c) Manager has for several years served a number of different open-end or mutual funds, as well as individuals, institutions, and other clients, as an investment advisor and manager. However, it appears that Manager has a close relationship with two of the mutual funds which it serves. A wholly owned subsidiary of Manager ("Distributors"), serves as distributor for the two mutual funds and has no other function. In addition, the chairman and treasurer of Manager, as well as the president, assistant treasurer, and a director of Manager, are officers and directors of Distributors and trustees of both funds. It appears also that a director of Manager is president and director of Distributors, while the clerk of Manager is also clerk of Distributors. Manager, Distributors and both funds are listed at the same address in the local telephone directory.

(d) While the greater part of the total annual income of Manager during the past five years has derived from "individuals, institutions, and other clients", it appears that a substantial portion has been attributable to the involvement with the two funds in question. During each of the last four years, that portion has exceeded a third of the total income of Manager, and in 1962 it reached nearly 40 percent.

(e) The Board has consistently held that an open-end or mutual fund is engaged in the activities described in section 32, so long as it is issuing its securities for sale, since it is apparent that the more or less continued process of redemption of the stock issued by such a company would restrict and contract its activities if it did not continue to issue the stock. Clearly, a corporation that is engaged in underwriting or selling open-end shares, is so engaged.

(f) In connection with incorporated manager-advisors to open-end or mutual funds, the Board has expressed the view in a number of cases that where the corporation served a number of different clients, and the corporate structure was not interlocked with that of mutual fund and underwriter in such a way that it could be regarded as being controlled by or substantially one with them, it should not be held to be "primarily engaged" in section 32 activities. On the other hand, where a manager-advisor was created for the sole purpose of serving a particular fund, and its activities were limited to that function, the Board has regarded the group as a single entity for purposes of section 32.

(g) In the present case, the selling organization is a wholly-owned subsidiary of the advisor-manager, hence subject to the parent's control. Stock of the subsidiary will be voted according to decisions by the parent's board of directors, and presumably will be voted for a board of directors of the subsidiary which is responsive to policy lines laid down by the parent. Financial interests of the parent are obviously best served by an aggressive selling policy, and, in fact, both the share and the absolute amount of the parent's income provided by the two funds have shown a steady increase over recent years. The fact that dividends from Distributors have represented a relatively small proportion of the income of Manager, and that there were, indeed, no dividends in 1961 or 1962, does not support a contrary argument, in view of the steady increase in total income of Manager from the funds and Distributors taken as a whole.

(h) In view of all these facts, the Board has concluded that the separate corporate entities of Manager and Distributors should be disregarded and Distributors viewed as essentially a selling arm of Manager. As a result of this conclusion, section 32 would forbid interlocking service as an officer of Manager and a director of a member bank.

[28 FR 13437, Dec. 12, 1963]

§ 218.108 Interlocking relationship involving securities affiliate of brokerage firm.

(a) The Board of Governors was asked recently whether section 32 of the Banking Act of 1933 ("section 32"), 12 U.S.C. 78, prohibits the interlocking service of X as a director of a member bank of the Federal Reserve System and as a partner in a New York City brokerage firm ("Partnership") having a corporation affiliate ("Corporation") engaged in business of the kinds described in section 32 ("section 32 business").

(b) Section 32, subject to an exception not applicable here, provides that "No officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve the same time as an officer, director, or employee of any member bank * * *".

(c) From the information submitted it appears that Partnership, a member firm of the New York Stock Exchange, is the successor of two prior partnerships, in one of which X had been a partner. This prior partnership had been found not to be "primarily engaged" in section 32 business. The other prior partnership, however, had been so engaged. By arrangement between the two prior firms, Corporation was formed chiefly for the purpose of carrying on the section 32 business of the prior firm that had been "primarily engaged" in that business, which business was transferred to Corporation. The two prior firms were then merged and the stock of Corporation was acquired by all the partners of Partnership, other than X, in proportion to the respective partnership interests of the stockholding partners. The information submitted indicated also that two of the three directors and "some" of the principal officers of Corporation are partners in Partnership, although X is not a director or officer of Corporation.

(d) It is understood that the practice of forming corporate affiliates of brokerage firms, in order that the affiliate may carry on the securities business (such as section 32 business) with limited liability and other advantages, has become rather widespread in recent years. Accordingly, other cases may arise where a partner in such a firm may desire to serve at the same time as director of a member bank.

(e) On the basis of the information presented the Board concluded that X in his capacity as an "individual", was not engaged in section 32 business. However, as that information showed Corporation to be "primarily engaged" in section 32 business, the Board stated that a finding that Partnership and Corporation were one entity for the purposes of the statute would mean that X would be forbidden to serve both the member bank and Partnership, if the one entity were so engaged.

(f) Paragraph .15 of Rule 321 of the New York Stock Exchange governing the formation and conduct of affiliated companies of member organizations states that:

> Since Rule 314 provides that each member and allied member in a member organization must have a fixed interest in its entire business, it follows that the fixed interest of each member and allied member must extend to the member organization's corporate affiliate. When any of the corporate affiliate's participating stock is owned by the members and allied members in the member organization, such holdings must at all times be distributed among such members and allied members in approximately the same proportions as their respective interests in the profits of the member organization. When a member or allied member's interest in the member organization is changed, a corresponding change must be made in his participating interest in the affiliate.

(g) Although it was understood that X had received special permission from the Exchange not to own any of the stock of Corporation, it appeared to the Board that Rule 321.15 would apply to the remaining partners. Moreover, other paragraphs of the rule forbid transfers of the stock, except under certain circumstances to limited classes of persons, such as employees of the organization or estates of decedent partners, without permission of the Exchange.

(h) The information supplied to the Board clearly indicated that Corporation was formed in order to provide Partnership with an "underwriting arm". Under Rule 321 of the Exchange, the partners (other than X) are required to own stock in Corporation because of their partnership interest, would be required to surrender that stock on leaving the partnership, and incoming partners would be required to acquire such stock. Furthermore, Rule 321 speaks of a corporate affiliate, such as Corporation, as a part of the "entire business" of a member organization.

(i) On the basis of the foregoing, the Board concluded that Partnership and Corporation must be regarded as a single entity or enterprise for purposes of section 32.

(j) The remaining question was whether the enterprise, as a whole, should be regarded as "primarily engaged" in section 32 business. The information presented stated that the total dollar volume of section 32 business of Corporation during the first eleven months of its operation was $89 million. The gross income from section 32 business was less than half a million, and represented about 7.9 percent of the income of Partnership. The Board was advised that the relatively low amount of income from section 32 business of Corporation as due to special costs, and to the condition of the market for municipal and State bonds during the past year, a field in which Corporation specializes. Corporation is listed in a standard directory of securities dealers, and holds itself out as having separate departments to deal with the principal underwriting areas in which it functions.

(k) In view of the above information, the Board concluded that the enterprise consisting of Partnership and Corporation was "primarily engaged" in section 32 business. Accordingly, the Board stated that the partners in Partnership, including X, were forbidden by that section and by this Part 218 (Reg. R), issued pursuant to the statute, to serve as officers, directors, or employees of any member banks.

[29 FR 5315, Apr. 18, 1964]

§ 218.109 Short-term negotiable notes of banks not securities under section 32, Banking Act of 1933.

(a) The Board of Governors has been asked whether short-term unsecured negotiable notes of the kinds issued by some of the large banks in this country as a means of obtaining funds are "other similar securities" within the meaning of section 32, Banking Act of 1933 (12 U.S.C. 78) and this part.

(b) Section 32 forbids certain interlocking relationships between banks which are members of the Federal Reserve System and individuals or organizations "primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities * * *." Therefore, if such notes are securities similar to stocks or bonds, any dealing therein would be an activity covered in section 32 and would have to be taken into consideration in determining whether the individual or organization involved was "primarily engaged" in such activities.

(c) The Board has concluded that such short-term notes of the kind described above are not "other similar securities" within the meaning of section 32 and this part.

(12 U.S.C. 248)

[29 FR 16065, Dec. 2, 1964]

§ 218.110 Investment for own account affects applicability of section 32.

(a) The Board of Governors has been presented with the question whether a certain firm is primarily engaged in the activities described in section 32 of the Banking Act of 1933. If the firm is so engaged, then the prohibitions of section 32 forbids a limited partner to serve as employee of a member bank.

(b) The firm describes the bulk of its business, producing roughly 60 percent of its income, as "investing for its own account." However, it has a seat on the local stock exchange, and acts as specialist and odd-lot dealer on the floor of the exchange, an activity responsible for some 30 percent of its volume and profits. The firm's "off-post trading," apart from the investment account, gives rise to about 5 percent of its total volume and 10 percent of its profits. Gross volume has risen from $4 to $10 million over the past 3 years, but underwriting has accounted for no more than one-half of 1 percent of that amount.

(c) Section 32 provides that "No officer, director, or employee of any corporation or unincorporated association, no partner, or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale, or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve the same time (sic) as an officer, director, or employee of any member bank * * *"

(d) In interpreting this language, the Board has consistently held that underwriting, acting as a dealer, or generally speaking, selling, or distributing securities as a principal, is covered by the section, while acting as broker or agent is not.

(e) In one type of situation, however, although a firm was engaged in selling securities as principal, on its own behalf, the Board held that section 32 did not apply. In these cases, the firm alleged that it bought and sold securities purely for investment purposes. Typically, those cases involved personal holding companies or small family investment companies. Securities had been purchased only for members of a restricted family group, and had been held for relatively long periods of time.

(f) The question now before the Board is whether a similar exception can apply in the case of the investment account of a professional dealer. In order to answer this question, it is necessary to analyze, in the light of applicable principles under the statute, the three main types of activity in which the firm has been engaged, (1) acting as specialist and odd-lot dealer, (2) off-post trading as an ordinary dealer, and (3) investing for its own account.

(g) On several occasions, the Board has held that, to the extent the trading of a specialist or odd-lot dealer is limited to that required for him to perform his function on the floor of the exchange, he is acting essentially in an agency capacity. In a letter of September 13, 1934, the Board held that the business of a specialist was not of the kind described in the (unamended) section on the understanding that "* * * in acting as specialists on the New York Curb Exchange, it is necessary for the firm to buy and sell odd lots and * * * in order to protect its position after such transactions have been made, the firm sells or buys shares in lots of 100 or multiples thereof in order to reduce its position in the stock in question to the smallest amount possible by this method. It appears therefore that, in connection with these transactions, the firm is neither trading in the stock in question or taking a position in it except to the extent made necessary by the fact that it deals in odd lots and cannot complete the transactions by purchases and sales on the floor of the exchange except to the nearest 100 share amount."

(h) While subsequent amendments to section 32 to some extent changed the definition of the kinds of securities business that would be covered by the section, the amendments were designed so far as is relevant to the present question, to embody existing interpretations of the Board. Accordingly, to the extent that the firm's business is described by the above letter of the Board, it should not be considered to be of a kind described in section 32.

(i) Turning to the firm's off-post trading, the Board is inclined to agree with the view that this is sufficient to make the case a borderline one under the statute. In the circumstances, the Board might prefer to postpone making a determination until figures for 1965 could be reviewed, particularly in the light of the recent increase in total volume, if it were not for the third category, the firm's own investment account.

(j) While this question has not been squarely presented to it in the past, the Board is of the opinion that when a firm is doing any significant amount of business as a dealer or underwriter, then investments for the firm's own account should be taken into consideration in determining whether the firm is "primarily engaged" in the activities described in section 32. The division into dealing for one's own account, and dealing with customers, is a highly subjective one, and although a particular firm or individual may be quite scrupulous in separating the two, the opportunity necessarily exists for the kind of abuse at which the statute is directed. The Act is designed to prevent situations from arising in which a bank director, officer, or employee could influence the bank or its customers to invest in securities in which his firm has an interest, regardless of whether he, as an individual, is likely to do so. In the present case, when these activities are added to the firm's "off-post trading", the firm clearly falls within the statutory definition.

(k) For the reasons just discussed, the Board concludes that the firm must be considered to be primarily engaged in activities described in section 32, and that the prohibitions of the section forbid a limited partner in that firm to serve as employee of a member bank.

(12 U.S.C. 248(i))

[30 FR 7743, June 16, 1965]

§ 218.111 Interlocking relationships between bank and its commingled investment account.

(a) The Board of Governors was asked recently whether the establishment of a proposed "Commingled Investment Account" ("Account") by a national bank would involve a violation of section 32 of the Banking Act of 1933 in view of the interlocking relationships that would exist between the bank and Account.

(b) From the information submitted, it was understood that Account would comprise a commingled fund, to be operated under the effective control of the bank, for the collective investment of sums of money that might otherwise be handled individually by the bank as managing agent. It was understood further that the Comptroller of the Currency had taken the position that Account would be an eligible operation for a national bank under his Regulation 9, "Fiduciary Powers of National Banks and Collective Investment Funds" (Part 9 of this title). The bank had advised the Board that the Securities and Exchange Commission was of the view that Account would be a "registered investment company" within the meaning of the Investment Company Act of 1940, and that participating interests in Account would be "securities" subject to the registration requirements of the Securities Act of 1933.

(c) The information submitted showed also that the minimum individual participation that would be permitted in Account would be $10,000, while the maximum acceptable individual investment would be half a million dollars; that there would be no "load" or payment by customers for the privilege of investing in Account; and that: "The availability of the Commingled Account would not be given publicity by the Bank except in connection with the promotion of its fiduciary services in general and the Bank would not advertise or publicize the Commingled Account as such. Participations in the Commingled Account are to be made available only on the premises of the Bank (including its branches), or to persons who are already customers of the Bank in other connections, or in response to unsolicited requests."

(d) Such information indicated further that participations would be received by the bank as agent, under a broad authorization signed by the customer, substantially equivalent to the power of attorney under which customers currently deposit their funds for individual investment, and that the participations would not be received "in trust."

(e) The Board understood that Account would be required to comply with certain requirements of the Federal securities laws not applicable to an ordinary common trust fund operated by a bank. In particular, supervision of Account would be in the hands of a committee to be initially appointed by the bank, but subsequently elected by participants having a majority of the units of participation in Account. At least one member of the committee would be entirely independent of the bank, but the remaining members would be officers in the trust department of the bank.

(f) The committee would make a management agreement with the bank under which the bank would be responsible for managing Account's investments, have custody of its assets, and maintain its books and records. The management agreement would be renewed annually if approved by the committee, including a "majority" of the independent members, or by a vote of participants having a majority of the units of participation. The agreement would be terminable on 60 days' notice by the committee, by such a majority of the participants, or by the bank, and would terminate automatically if assigned by the bank.

(g) It was understood also that the bank would receive as annual compensation for its services one-half of one percent of Account's average net assets. Account would also pay for its own independent professional services, including legal, auditing, and accounting services, as well as the cost of maintaining its registration and qualification under the Federal securities laws.

(h) Initially, the assets of Account would be divided into units of participation of an arbitrary value, and each customer would be credited with a number of units proportionate to his investment. Subsequently, the assets of Account would be valued at regular intervals, and divided by the number of units outstanding. New investors would receive units at their current value, determined in this way, according to the amount invested. Each customer would receive a receipt evidencing the number of units to which he was entitled. The receipts themselves would be nontransferable, but it would be possible for a customer to arrange with Account for the transfer of his units to someone else. A customer could terminate his participation at any time and withdraw the current value of his units.

(i) Section 32 of the Banking Act of 1933 provides in relevant part that: "No officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve [at] the same time as an officer, director, or employee of any member bank * * *."

(j) The Board concluded, based on its understanding of the proposal and on the general principles that have been developed in respect to the application of section 32, that the bank and Account would constitute a single entity for the purposes of section 32, at least so long as the operation of Account conformed to the representations made by the bank and outlined herein. Accordingly, the Board said that section 32 would not forbid officers of the bank to serve on Account's committee, since Account would be regarded as nothing more than an arm or department of the bank.

(k) In conclusion, the Board called attention to section 21 of the Banking Act of 1933 which, briefly, forbids a securities firm or organization to engage in the business of receiving deposits, subject to certain exceptions. However, since section 21 is a criminal statute, the Board has followed the policy of not expressing views as to its meaning. (1934 Federal Reserve Bulletin 41, 543.) The Board, therefore, expressed no position with respect to whether the section might be held applicable to the establishment and operation of the proposed "Commingled Investment Account."

(12 U.S.C. 248(i))

[30 FR 12836, Oct. 8, 1965]

§ 218.112 Interlocking relationships between member bank and variable annuity insurance company.

(a) The Board has recently been asked to consider whether section 32 of the Banking Act of 1933 (12 U.S.C. 78) and this part prohibit interlocking service between member banks and (1) the board of managers of an accumulation fund, registered under the Investment Company Act of 1940 (15 U.S.C. 80), that sells variable annuities and (2) the board of directors of the insurance company, of which the accumulation fund is a "separate account," but as to which the insurance company is the sponsor, investment advisor, underwriter, and distributor. Briefly, a variable annuity is one providing for annuity payment varying in accordance with the changing values of a portfolio of securities.

(b) Section 32 provides in relevant part that: "No officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve [at] the same time as an officer, director, or employee of any member bank * * *".

(c) For many years, the Board's position has been that an open-end investment company (or mutual fund) is "primarily engaged in the issue * * * public sale, or distribution * * * of securities" since the issuance and sale of its stock is essential to the maintenance of the company's size and to the continuance of its operations without substantial contraction, and that section 32 of the Banking Act of 1933 prohibits an officer, director, or employee of any such company from serving at the same time as an officer, director, or employee of any member bank. (1951 Federal Reserve Bulletin 645; § 218.101.)

(d) For reasons similar to those stated by the U.S. Supreme Court in Securities and Exchange Commission *v.* Variable Annuity Life Insurance Company of America, 359 U.S. 65 (1959), the Board concluded that there is no meaningful basis for distinguishing a variable annuity interest from a mutual fund share for section 32 purposes and that, therefore, variable annuity interests should also be regarded as "other similar securities" within the prohibition of the statute and regulation.

(e) The Board concluded also that, since the accumulation fund, like a mutual fund, must continually issue and sell its investment units in order to avoid the inevitable contraction of its activities as it makes annuity payments or redeems variable annuity units, the accumulation fund is "primarily engaged" for section 32 purposes. The Board further concluded that the insurance company was likewise "primarily engaged" for the purposes of the statute since it had no significant revenue producing operations other than as underwriter and distributor of the accumulation fund's units and investment advisor to the fund.

(f) Although it was clear, therefore, that section 32 prohibits any officers, directors, and employees of member banks from serving in any such capacity with the insurance company or accumulation fund, the Board also considered whether members of the board of managers of the accumulation fund are "officers, directors, or employees" within such prohibition. The functions of the board of managers, who are elected by the variable annuity contract owners, are, with the approval of the variable annuity contract owners, to select annually an independent public accountant, execute annually an agreement providing for investment advisory services, and recommend any changes in the fundamental investment policy of the accumulation fund. In addition, the Board of managers has sole authority to execute an agreement providing for sales and administrative services and to authorize all investments of the assets of the accumulation fund in accordance with its fundamental investment policy. In the opinion of the Board of Governors, the board of managers of the accumulation fund performs functions essentially the same as those performed by classes of persons as to whom the prohibition of section 32 was specifically directed and, accordingly, are within the prohibitions of the statute.

(12 U.S.C. 248(i))

[33 FR 12886, Sept. 12, 1968]

§ 218.113 Interlocking relationships between member bank and insurance company-mutual fund complex.

(a) The Board has been asked whether section 32 of the Banking Act of 1933 and this part prohibited interlocking service between member banks and (1) the advisory board of a newly organized open-end investment company (mutual fund), (2) the fund's incorporated investment manager-advisor, (3) the insurance company sponsoring and apparently controlling the fund.

(b) X Fund, Inc. ("Fund"), the mutual fund, was closely related to X Life Insurance Company ("Insurance Company"), as well as to the incorporated manager and investment advisor to Fund ("Advisors"), and the corporation serving as underwriter for Fund ("Underwriters"). The same persons served as principal officers and directors of Insurance Company, Fund, Advisors, and Underwriters. In addition, several directors of member banks served as directors of Insurance Company and of Advisors and as members of the Advisory Board of Fund, and additional directors of member banks had been named only as members of the Advisory Board. All outstanding shares of Advisors and of Underwriters were apparently owned by Insurance Company.

(c) Section 32 provides in relevant part that: "No officer, director, or employee of any corporation * * * primarily engaged in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve [at] the same time as an officer, director, or employee of any member bank * * *".

(d) The Board of Governors reaffirmed its earlier position that an open-end investment company is "primarily engaged" in activities described in section 32 "even though the shares are sold to the public through independent organizations with the result that the investment company does not derive any direct profit from the sales." (1951 Federal Reserve Bulletin 654, § 218.101.) Accordingly, the Board concluded that Fund must be regarded as so engaged, even though its shares were underwritten and distributed by Underwriters.

(e) As directors of the member banks involved in the inquiry were not officers, directors, or employees of either Fund or Underwriters, the relevant questions were whether—

(1) Advisors, and

(2) Insurance Company, should be regarded as being functionally and structurally so closely allied with Fund that they should be treated as one with it in determining the applicability of section 32. An additional question was whether members of the Advisory Board are "officers, directors, or employees" of Fund within the prohibition of the statute.

(f) Interlocking service with Advisory Board: The function of the Advisory Board was merely to make suggestions and to counsel with Fund's Board of Directors in regard to investment policy. The Advisory Board had no authority to make binding recommendations in any area, and it did not serve in any sense as a check on the authority of the Board of Directors. Indeed, the Fund's bylaws provided that the Advisory Board "shall have no power or authority to make any contract or incur any liability whatever or to take any action binding upon the Corporation, the Officers, the Board of Directors or the Stockholders." Members of the Advisory Board were appointed by the Board of Directors of Fund, which could remove any member of the Advisory Board at any time. None of the principal officers of Fund or of Underwriters were members of the Advisory Board; and the compensation of its members was expected to be nominal.

(g) The Board of Governors concluded that members of the Advisory Board need not be regarded as "officers, directors, or employees" of Fund or of Underwriters for purposes of section 32, and that the statute, therefore, did not prohibit officers, directors, or employees of member banks from serving as members of the Advisory Board.

(h) Interlocking service with Advisors: The principal officers and several of the directors of Advisors were identical with both those of Fund and of Underwriters. Entire management and investment responsibility for Fund had been placed, by contract, with Advisors, subject only to a review authority in the Board of Directors of Fund. Advisors also supplied office space for the conduct of Fund's affairs, and compensated members of the Advisory Board who are also officers or directors of Advisors. Moreover, it appeared that Advisors was created for the sole purpose of servicing Fund, and its activities were to be limited to that function.

(i) In the view of the Board of Governors, the structural and functional identity of Fund and Advisors was such that they were to be regarded as a single entity for purposes of section 32, and, accordingly, officers, directors, and employees of member banks were prohibited by section 32 from serving in any such capacity with such entity.

(j) Interlocking service with Insurance Company: It was clear that Insurance Company was not as yet "primarily engaged" in business of a kind described in section 32 with respect to the shares of the newly created Fund sponsored by Insurance Company, since the issue and sale of such shares had not yet commenced. Nor did it appear that Insurance Company would be so engaged in the preliminary stages of Fund's existence, when the disproportion between the insurance business of Insurance Company and the sale of Fund shares would be very great. However, it was also clear that if Fund was successfully launched, its activities would rather quickly reach a stage where a serious question would arise as to the applicability of the section 32 prohibition.

(k) An estimate supplied to the Board indicated that 100,000 shares of Fund might be sold annually to produce, based on then current values, annual gross sales receipts of over $1 million. Insurance Company's total gross income for its last fiscal year was almost $10 million. On this basis, about one-tenth of the annual gross income of the Insurance Company-

Fund complex (more than one-tenth, if income from investments of Insurance Company was eliminated) would be derived from sales of Fund shares. Although total sales of shares of Fund during the first year might not approximate expectations, it was assumed that if the estimate or projection was correct, the annual rate of sale might well rise to that level before the end of the first year of operation.

(l) It appeared that net income of Insurance Company from Fund's operations would be minimal for the foreseeable future. However, it was understood that Insurance Company's chief reason for launching Fund was to provide salesmen for Insurance Company (who were to be the only sellers of shares of Fund, and most of whom, Insurance Company hoped, would qualify to sell those shares), with a "package" of mutual fund shares and life insurance policies that would provide increased competitive strength in a highly competitive field.

(m) The Board concluded that Insurance Company would be "primarily engaged" in issuing or distributing shares of Fund within the meaning of section 32 by not later than the time of realization of the aforementioned estimated annual rate of sale, and possibly before. As indicated in Board of Governors v. Agnew, 329 U.S. 441 at 446, the prohibition of the statute applies if the section 32 business involved is a "substantial" activity of the company.

(n) This, the Board observed, was not to suggest that officers, directors, or employees of Insurance Company who are also directors of member banks would be likely, as individuals, to use their positions with the banks to further sales of Fund's shares. However, as the Supreme Court pointed out in the Agnew case, section 32 is a "preventive or prophylactic measure." The fact that the individuals involved "have been scrupulous in their relationships" to the banks in question "is immaterial."

(12 U.S.C. 248(i))

[33 FR 13001, Sept. 14, 1968]

§ 218.114 Interlocking service between securities companies and bank holding companies.

(a) The Board has recently considered whether section 32 of the Banking Act of 1933 (12 U.S.C. 78) and this part (Regulation R) prohibit a person primarily engaged in securities activities described in section 32, or associated with an organization so engaged, from serving as an officer, director, or employee of a holding company proposed to be organizd by a member bank to own all the stock of such bank.

(b) Section 32 provides in relevant part that: "No officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve [at] the same time as an officer, director, or employee of any member bank * * *."

(c) As the U.S. Supreme Court observed in Board of Governors v. Agnew, 329 U.S. 441 (1946), "Section 32 is directed to the probability or likelihood, based on the experience of the 1920's, that a bank director interested in the underwriting business may use his influence in the bank to involve it or its customers in securities which his underwriting house has in its portfolio or has committed itself to take. * * * It [section 32] is a preventive or prophylactic measure."

(d) In an earlier interpretation, the Board had concluded that section 32 did not prohibit a partner of a securities firm from serving as a director of a long-established holding company, with seven nonbank subsidiaries, that recently had acquired the controlling stock of a member bank. In distinguishing that situation from the present matter, the Board observed that the predominant—in fact, almost the sole—function of the proposed bank holding company would be to hold the stock of the bank. It therefore appeared to the Board that the affairs of the member bank and the holding company would be so closely identified and functionally related that the same possibilities of abuse which section 32 was designed to guard against would be present in the case of a director of the holding company as in the case of a director of the member bank. To give cognizance to the separate corporate entities in such a situation, would, in the Board's opinion, partially frustrate Congressional purpose in enacting the statute.

(e) The Board concluded that where the principal activity of a holding company is the ownership and control of banks, including one or more member banks, the holding company and each member bank subsidiary should be considered as constituting together a single entity for section 32 purposes, so that a person who is primarily engaged in section 32 business or associated with an organization so engaged is prohibited by that law from serving as an officer, director, or employee of such a holding company.

(12 U.S.C. 248(i))

[34 FR 57, Jan. 3, 1969]

PART 219—REIMBURSEMENT TO FINANCIAL INSTITUTIONS FOR ASSEMBLING OR PROVIDING FINANCIAL RECORDS

Sec.
219.1 Authority, purpose and scope.
219.2 Definitions.
219.3 Cost reimbursement.
219.4 Exceptions.
219.5 Conditions for payment.
219.6 Payment procedures.
219.7 Effective date.

AUTHORITY: 12 U.S.C. 3415.

SOURCE: 44 FR 55813, Sept. 28, 1979, unless otherwise noted.

§ 219.1 Authority, purpose and scope.

This part is issued by the Board of Governors of the Federal Reserve System under section 1115 of the Right to Financial Privacy Act of 1978 (the "Act") (12 U.S.C. 3415). It establishes the rates and conditions for reimbursement of reasonably necessary costs directly incurred by financial institutions in assembling or providing customer financial records to a government authority.

§ 219.2 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) "Financial institution" means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(b) "Financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(c) "Government authority" means any agency or department of the United States, or any officer, employee or agent thereof.

(d) "Person" means an individual or a partnership of five or fewer individuals.

(e) "Customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name. "Customer" does not include corporations or partnerships comprised of more than five persons.

(f) "Directly incurred costs" means costs incurred solely and necessarily as a consequence of searching for, reproducing or transporting books, papers, records, or other data, in order to comply with legal process or a formal written request or a customer's authorization to produce a customer's financial records. The term does not include any allocation of fixed costs (overhead, equipment, depreciation, etc.). If a financial institution has financial records that are stored at an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs are considered to be directly incurred by the financial institution.

§ 219.3 Cost reimbursement.

Except as hereinafter provided, a government authority requiring or requesting access to financial records pertaining to a customer shall pay to the financial institution that assembles or provides the financial records a fee for reimbursement of reasonably necessary costs which have been directly incurred according to the following schedule:

(a) *Search and processing costs.* (1) Reimbursement of search and processing costs shall be the total amount of personnel direct time incurred in locating and retrieving, reproducing, packaging and preparing financial records for shipment.

(2) The rate for search and processing costs is $10 per hour per person, computed on the basis of $2.50 per quarter hour or fraction thereof, and is limited to the total amount of personnel time spent in locating and retrieving documents or information or reproducing or packaging and preparing documents for shipment where required or requested by a government authority. Specific salaries of such persons shall not be included in search costs. In addition, search and processing costs do not include salaries, fees, or similar costs for analysis of material or for managerial or legal advice, expertise, research, or time spent for any of these activities. If itemized separately, search and processing costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies; however, personnel time for computer search may be paid for only at the rate specified in this paragraph.

(b) *Reproduction costs.* (1) Reimbursement for reproduction costs shall be for costs incurred in making copies of documents required or requested.

(2) The rate for reproduction costs for making copies of required or requested documents is 15 cents for each page, including copies produced by reader/printer reproduction processes. Photographs, films, and other materials are reimbursed at actual cost.

(c) *Transportation costs.* Reimbursement for transportation costs shall be for (1) necessary costs, directly incurred, to transport personnel to locate and retrieve the information required or requested; and (2) necessary costs, directly incurred solely by the need to convey the required or requested material to the place of examination.

§ 219.4 Exceptions.

A financial institution is not entitled to reimbursement under the Act for costs incurred in assembling or providing the following financial records or information:

(a) *Security interests, bankruptcy claims, debt collection.* Any financial records provided as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary.

(b) *Government loan programs.* Financial records provided in connection with a government authority's consideration or administration of assistance to a customer in the form of a government loan, loan guaranty, or loan insurance program; or as an incident to processing an application for assistance to a customer in the form of a government loan, loan guaranty, or loan insurance agreement; or as an incident to processing a default on, or administering, a government-guaranteed or insured loan, as necessary to permit a responsible government authority to carry out its responsibilities under the loan, loan guaranty, or loan insurance agreement.

(c) *Nonidentifiable information.* Financial records that are not identified with or identifiable as being derived from the financial records of a particular customer.

(d) *Financial supervisory agencies.* Financial records disclosed to a financial supervisory agency in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

(e) *Internal Revenue summons.* Financial records disclosed in accordance with procedures authorized by the Internal Revenue Code.

(f) *Federally required reports.* Financial records required to be reported in accordance with any federal statute or rule promulgated thereunder (such as the Bank Secrecy Act).

(g) *Government civil or criminal litigation.* Financial records sought by a government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the government authority and the customer are parties.

(h) *Administrative agency subpoenas.* Financial records sought by a government authority pursuant to an administrative subpoena issued by an administrative law judge in an adjudicatory proceeding subject to section 554 of Title 5, United States Code, and to which the government authority and the customer are parties.

(i) *Identity of accounts in limited circumstances.* Financial information sought by a government authority, in accordance with the Right to Financial Privacy Act procedures and for a legitimate law enforcement inquiry, and limited only to the name, address, account number and type of account of any customer or ascertainable group of customers associated (1) with a financial transaction or class of financial transactions, or (2) with a foreign country or subdivision thereof in the case of a government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)); the International Emergency Economic Powers Act (Title II, Pub. L. 95-223); or section 5 of the United Nations Participation Act (22 U.S.C. 287(c).

(j) *Investigation of a financial institution or its noncustomers.* Financial records sought by a government authority in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records or at a legal entity which is not a customer.

(k) *General Accounting Office requests.* Financial records sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.

(l) *Securities and Exchange Commission requests.* Until November 10, 1980, financial records sought by the Securities and Exchange Commission.

§ 219.5 Conditions for payment.

(a) *Limitations.* Payment for reasonably necessary, directly incurred costs to financial institutions shall be limited to material required or requested.

(b) *Separate consideration of component costs.* Payment shall be made only for costs that are both directly incurred and reasonably necessary. In determining whether costs are reasonably necessary, search and processing, reproduction, and transportation costs shall be considered separately.

(c) *Compliance with legal process, request, or authorization.* No payment shall be made until the financial institution satisfactorily complies with the legal process or formal written request, or customer authorization, except that in the case where the legal process or formal written request is withdrawn, or the customer authorization is revoked, or where the customer successfully challenges access by or disclosure to a government authority, the financial institution shall be reimbursed for reasonably necessary costs directly incurred in assembling financial records required or requested to be produced prior to the time that the government authority notifies the institution that the legal process or request is withdrawn or defeated, or that the customer has revoked his or her authorization.

(d) *Itemized bill or invoice.* No payment shall be made unless the financial institution submits an itemized bill or invoice showing specific details concerning the search and processing, reproduction, and transportation costs.

§ 219.6 Payment procedures.

(a) *Notice to submit invoice.* Promptly following a government authority's service of legal process or request, the government authority shall notify the financial institution that an itemized bill or invoice must be submitted for payment and shall furnish an office address for this purpose.

(b) *Special notice.* If a government authority withdraws the legal process or formal written request, or if the customer revokes his or her authorization, or if the legal process or request has been successfully challenged by the customer, the government authority shall promptly notify the financial institution of these facts, and shall also notify the financial institution that the itemized bill or invoice must be submitted for payment of costs incurred prior to the time that the financial institution receives this notice.

§ 219.7 Effective date.

This regulation shall become effective October 1, 1979.

PART 220—CREDIT BY BROKERS AND DEALERS

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220.130 Escrow receipts for option transactions.

AUTHORITY: Secs. 3, 7, 8, 17 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q and 78w).

SOURCE: Regulation T, §§ 220.1 through 220.18 appear at 48 FR 23165, May 24, 1983, unless otherwise noted.

EDITORIAL NOTE 1: A copy of each form referred to in this part is filed as a part of the original document. Copies are available upon request to the Board of Governors of the Federal Reserve System or any Federal Reserve Bank.

EDITORIAL NOTE 2: For FR citations to changes to the List of OTC Margin Stocks, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 220.1 Authority, purpose, and scope.

(a) *Authority and purpose.* Regulation T (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C. 78a et seq.). Its principal purpose is to regulate extensions of credit by and to brokers and dealers; it also covers related transactions within the Board's authority under the Act. It imposes, among other obligations, initial margin requirements and payment rules on securities transactions.

(b) *Scope.* (1) This part provides a margin account and seven special purpose accounts in which to record all financial relations between a customer and a creditor. Any transaction not specifically permitted in a special account shall be recorded in a margin account.

(2) This part does not preclude any exchange, national securities association, or creditor from imposing additional requirements or taking action for its own protection.

§ 220.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section.

(a) "Credit balance" means the cash amount due the customer in a margin account after debiting amounts transferred to the special memorandum account.

(b) "Creditor" means any broker or dealer (as defined in sections 3(a)(4) and 3(a)(5) of the Act), any member of a national securities exchange, or any person associated with a broker or dealer (as defined in section 3(a)(18) of the Act), except for business entities controlling or under common control with the creditor.

(c) "Customer" includes: (1) Any person or persons acting jointly: (i) To or for whom a creditor extends, arranges, or maintains any credit; or (ii) who would be considered a customer of the creditor according to the ordinary usage of the trade;

(2) Any partner in a firm who would be considered a customer of the firm absent the partnership relationship; and

(3) Any joint venture in which a creditor participates and which would be considered a customer of the creditor if the creditor were not a participant.

(d) "Debit balance" means the cash amount owed to the creditor in a margin account after debiting amounts transferred to the specia memorandum account.

(e) "Delivery against payment," "Payment against delivery," or a "C.O.D. transaction" refers to an arrangement under which a creditor and a customer agree that the creditor wil deliver to, or accept from, the customer, or the customer's agent, a securit against full payment of the purchas price.

(f) "Equity" means the total curren market value of security positions hel in the margin account plus any credi balance less the debit balance in th margin account.

(g) "Escrow agreement" means an agreement issued in connection with call or put option under which a bank holding the underlying security, foreign currency, certificate of deposit, o required cash, is obligated to deliver t the creditor (in the case of a ca option) or accept from the creditor (i the case of a put option) the underlying security, foreign currency, or certificate of deposit against payment o the exercise price upon exercise of th call or put.

(h) "Examining authority" mean (1) The national securities exchang or other self-regulatory organizatio of which a creditor is a member; or

(2) If not a member of any such sel regulatory organization, the Region Office of the Securities and Exchang Commission (SEC) where the credit has its principal place of business; or

(3) If a member of more than o self-regulatory organization, the org nization designated by the SEC as th examining authority for the creditor.

(i) "Good faith margin" means th amount of margin which a credito exercising sound credit judgmen would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions.

(j) "In or at the money" means the current market price of the underlying security is not more than one standard exercise interval below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

(k) "In the money" means the current market price of the underlying security is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

(l) "Margin call" means a demand by a creditor to a customer for a deposit of additional cash or securities to eliminate or reduce a margin deficiency as required under this part.

(m) "Margin deficiency" means the amount by which the required margin exceeds the equity in the margin account.

(n) "Margin excess" means the amount by which the equity in the margin account exceeds the required margin. When the margin excess is represented by securities, the current value of the securities is subject to the percentages set forth in § 220.18 (the Supplement).

(o) "Margin security" means:

(1) Any registered security;

(2) Any OTC margin stock;

(3) Any OTC margin bond;

(4) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security); or

(5) Any security issued by either an open-end investment company or unit investment trust which is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

(p) "Nonexempted security" means any security other than an exempted security (as defined in section 3(a)(12) of the Act).

(q) "Nonmember bank" means a bank that is not a member of the Federal Reserve System.

(r) "OTC margin bond" means: (1) A debt security not traded on a national securities exchange which meets all of the following requirements:

(i) At the time of the original issue, a principal amount of not less than $25,000,000 of the issue was outstanding;

(ii) The issue was registered under section 5 of the Securities Act of 1933 (15 U.S.C. 77e) and the issuer either files periodic reports pursuant to section 13(a) or 15(d) of the Act or is an insurance company which meets all of the conditions specified in section 12(g)(2)(G) of the Act; and

(iii) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; or

(2) A private mortgage pass-through security (not guaranteed by an agency of the U.S. government) meeting all of the following requirements:

(i) An aggregate principal amount of not less than $25,000,000 (which may be issued in series) was issued pursuant to a registration statement filed with the SEC under section 5 of the Securities Act of 1933;

(ii) Current reports relating to the issue have been filed with the SEC; and

(iii) At the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering.

(s) "OTC margin stock" means any equity security not traded on a national securities exchange that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an "OTC margin stock" unless it appears on the Board's periodically published list of OTC margin stocks.

(t) "Overlying option" means: (1) A put option purchased or a call option written against a long position in an underlying security in the specialist record in § 220.12(b); or

(2) A call option purchased or a put option written against a short position in an underlying security in the specialist record in § 220.12(b).

(u) "Purpose credit" means credit for the purpose of: (1) Buying, carrying, or trading in securities; or

(2) Buying or carrying any part of an investment contract security which shall be deemed credit for the purpose of buying or carrying the entire security.

(v) "Registered security" means any security that: (1) Is registered on a national securities exchange; or

(2) Has unlisted trading privileges on a national securities exchange.

(w) "Short call or short put" means a call option or a put option that is issued, endorsed, or guaranteed in or for an account.

(1) A short call obligates the customer to sell the underlying security, foreign currency, or certificate of deposit at the exercise price upon receipt of an exercise notice at any time prior to the expiration date of the option.

(2) A short put obligates the customer to purchase the underlying security, foreign currency, or certificate of deposit at the exercise price upon receipt of an exercise notice at any time prior to the expiration date of the option.

(3) A short call or a short put on stock index options obligates the customer to pay the holder of an "in the money" long put or call who has exercised the option the cash difference between the exercise price and the current assigned value of the index as established by the option contract.

(x) "Specialist joint account" means an account which, by written agreement, provides for the commingling of the security positions of the participants and a sharing of profits and losses from the account on some predetermined ratio.

(y) "Underlying security" means the security that will be delivered upon exercise of an option.

[48 FR 23165, May 24, 1983; 48 FR 34945, Aug. 2, 1983, as amended at 49 FR 35758, Sept. 12, 1984]

§ 220.3 General provisions.

(a) *Records.* The creditor shall m
tain a record for each account sho
the full details of all transactions.

(b) *Separation of accounts.* Ex
as provided for in the margin acc
and the special memorandum acco
the requirements of an account
not be met by considering items in
other account. If withdrawals of
or securities are permitted under
regulation, written entries shal
made when cash or securities are
for purposes of meeting requirem
in another account.

(c) *Maintenance of credit.* Excep
prohibited by this part, any credit
tially extended in compliance
this part may be maintained re
less of:

(1) Reductions in the custon
equity resulting from changes
market prices;

(2) Any security in an account
ing to be margin or exempted; or

(3) Any change in the margin
quirements prescribed under this

(d) *Guarantee of accounts.* No
antee of a customer's account sha
given any effect for purposes of
part.

(e) *Receipt of funds or securitie*
A creditor, acting in good faith,
accept as immediate payment:

(i) Cash or any check, draft, or
payable on presentation; or

(ii) Any security with sight dra
tached.

(2) A creditor may treat a secu
check or draft as received upon
ten notification from another cre
that the specified security, chec
draft has been sent.

(3) Upon notification that a c
draft, or order has been dishonor
when securities have not been rec
within a reasonable time, the cre
shall take the action required by
part when payment or securitie
not received on time.

(f) *Exchange of securities.* (1
enable a customer to participate
offer to exchange securities whi
made to all holders of an issue of
rities, a creditor may submit fo
change any securities held in a m
account, without regard to the
provisions of this part, provide

consideration received is deposited into the account.

(2) If a nonmargin, nonexempted security is acquired in exchange for a margin security, its retention, withdrawal, or sale within 60 days following its acquisition shall be treated as if the security is a margin security.

(g) *Valuing securities.* The current market value of a security shall be determined as follows:

(1) Throughout the day of the purchase or sale of a security, the creditor shall use the security's total cost of purchase or the net proceeds of its sale including any commissions charged.

(2) At any other time, the creditor shall use the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(h) *Innocent mistakes.* If any failure to comply with this part results from a mistake made in good faith in executing a transaction or calculating the amount of margin, the creditor shall not be deemed in violation of this part if, promptly after the discovery of the mistake, the creditor takes appropriate corrective action.

(i) *Variable annuity contracts issued by insurance companies.* Any insurance company that issues or sells variable annuity contracts or engages in a general securities business as a broker or dealer shall be subject to this part only for transactions in connection with those activities. Extensions of credit associated with conventional lending practices of insurance companies are subject to Part 207 of this chapter.

§ 220.4 Margin account.

(a) *Margin transactions.* (1) All transactions not specifically authorized for inclusion in another account shall be recorded in the margin account.

(2) A creditor may establish separate margin accounts for the same person to:

(i) Clear transactions for other creditors where the transactions are introduced to the clearing creditor by separate creditors; or

(ii) Clear transactions through other creditors if the transactions are effected by separate creditors; or

(iii) Provided one or more accounts over which the creditor or a third party investment adviser has investment discretion.

(b) *Required margin.* The required margin for each position in securities is set forth in § 220.18 (the Supplement) and is subject to the exceptions and special provisions contained in § 220.5 (Margin Account Exceptions and Special Provisions).

(c) *When additional margin is required*—(1) *Computing deficiency.* All transactions on the same day shall be combined to determine whether additional margin is required by the creditor. For the purpose of computing equity in an account, security positions are established or eliminated and a credit or debit created on the trade date of a security transaction. Additional margin is required on any day when the day's transactions create or increase a margin deficiency in the account and shall be for the amount of the margin deficiency so created or increased.

(2) *Satisfaction of deficiency.* The additional required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, margin securities, exempted securities, or any combination thereof.

(3) *Time limits.* (i) A margin call shall be satisfied within 7 business days after the margin deficiency was created or increased.

(ii) The 7 day period may be extended for one or more limited periods upon application by the creditor to a self-regulatory organization or national securities association unless the organization or association believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action. Applications shall be filed and acted upon prior to the end of the 7 day period or the expiration of any subsequent extension. However, applications filed by firms having no direct electronic access to the organization or association may be accepted as timely filed if postmarked by midnight of the last day of the 7 day period or any subsequent extension.

(4) *Satisfaction restriction.* Any transaction, position, or deposit that is used to satisfy one requirement under this part shall be unavailable to satisfy any other requirement.

(d) *Liquidation in lieu of deposit.* If any margin call is not met in full within the required time, the creditor shall liquidate securities sufficient to meet the margin call or to eliminate any margin deficiency existing on the day such liquidation is required, whichever is less. If the margin deficiency created or increased is $500 or less, no action need be taken by the creditor.

(e) *Withdrawals of cash or securities.* (1) Cash or securities may be withdrawn from an account, except if:

(i) Additional cash or securities are required to be deposited into the account for a transaction on the same or a previous day; or

(ii) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency.

(2) Margin excess may be withdrawn or may be transferred to the special memorandum account (§ 220.6) by making a single entry to that account which will represent a debit to the margin account and a credit to the special memorandum account.

(3) If a creditor does not receive a distribution of cash or securities which is payable with respect to any security in a margin account on the day it is payable and withdrawal would not be permitted under this paragraph, a withdrawal transaction shall be deemed to have occurred on the day the distribution is payable.

(f) *Interest, service charges, etc.* (1) Without regard to the other provisions of this section, the creditor, in its usual practice, may debit the following items to a margin account if they are considered in calculating the balance of such account:

(i) Interest charged on credit maintained in the margin account;

(ii) Premiums on securities borrowed in connection with short sales or to effect delivery;

(iii) Dividends, interest, or other distributions due on borrowed securities;

(iv) Communication or shipping charges with respect to transactions in the margin account; and

(v) Any other service charges which the creditor may impose.

(2) A creditor may permit interest, dividends, or other distributions credited to a margin account to be withdrawn from the account if:

(i) The withdrawal does not create or increase a margin deficiency in the account; or

(ii) The current market value of any securities withdrawn does not exceed 10 percent of the current market value of the security with respect to which they were distributed.

§ 220.5 Margin account exceptions and special provisions.

(a) *Unissued securities* (1) The required margin on a net long or net short commitment in an unissued security is the margin that would be required if the security were an issued margin security, plus any unrealized loss on the commitment or less any unrealized gain.

(2) Margin is not required on a net short commitment in unissued securities when the account contains the related issued securities, nor for any net short or net long position in unissued exempted securities.

(b) *Short sales*—(1) The required margin for the short sale of a security shall be the amount set forth in § 220.18 (the Supplement).

(2) A short sale "against the box" shall be treated as a long sale for the purpose of computing the equity and the required margin.

(c) *Options*—(1) *Margin or cover for options on exempted debt securities, certificates of deposit, stock indices, or securities exchange traded options on foreign currencies.* The required margin for each transaction involving any short put or short call on an exempted debt security, certificate of deposit, stock index, or foreign currency (if the option is traded on a securities exchange), shall be the amount or positions in lieu of margin set forth in § 220.18 (the Supplement).

(2) *Margin for options on equity securities.* The required margin for each transaction involving any short put or short call on an equity security shall be the amount set forth in § 220.18 (the Supplement).

(3) *Cover or positions in lieu of margin.* No margin is required for an option written on an equity security position when the account holds any of the following:

(i) The underlying security in the case of a short call, or a short position in the underlying security in the case of a short put;

(ii) Securities immediately convertible into or exchangeable for the underlying security without the payment of money in the case of a short call, if the right to convert or exchange does not expire on or before the expiration date of the short call;

(iii) An escrow agreement for the underlying security or foreign exhange (in the case of a short call) or cash (in the case of a short put);

(iv) A long call on the same number of shares of the same underlying security if the long call does not expire before the expiration date of the short call, and if the amount (if any), by which the exercise price of the long call exceeds the exercise price of the short call is deposited in the account;

(v) A long put on the same number of shares of the same underlying security if the long put does not expire before the expiration date of the short put, and if the amount (if any), by which the exercise price of the short put exceeds the exercise price of the long put is deposited in the account;

(vi) A warrant to purchase the underlying security, in the case of a short call, if the warrant does not expire on or before the expiration date of the short call, and if the amount (if any), by which the exercise price of the warrant exceeds the exercise price of the short call is deposited in the account. A warrant used in lieu of the required margin under this provision shall contribute no equity to the account.

(4) *Adjustments.* (i) When a short position held in the account serves in lieu of the required margin for a short put, the amount prescribed by paragraph (c)(2) of this section as the amount to be added to the required margin in respect of short sales shall be increased by any unrealized loss on the position.

(ii) When a security held in the account serves in lieu of the required margin for a short call, the security shall be valued at no greater than the exercise prices of the short call.

(5) *Straddles.* When both a short put and a short call are in a margin account on the same number of shares of the same underlying security, the required margin shall be the margin on either the short put or the short call, whichever is greater, plus any unrealized loss on the other option.

(6) *Exclusive designation.* The customer may designate at the time the option order is entered which security position held in the account is to serve in lieu of the required margin, if such service is offered by the creditor; or the customer may have a standing agreement with the creditor as to the method to be used for determining on any given day which security position will be used in lieu of the margin to support an option transaction. Only security held in the account which serves in lieu of the required margin for a short put or a short call shall be unavailable to support any other option transaction in the account.

(d) *Accounts of partners.* If a partner of the creditor has a margin account with the creditor, the creditor shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of the partner's margin account.

(e) *Contribution to joint venture.* If a margin account is the account of a joint venture in which the creditor participates, any interest of the creditor in the joint account in excess of the interest which the creditor would have on the basis of its right to share in the profits shall be treated as an extension of credit to the joint account and shall be margined as such.

(f) *Transfer of accounts.* (1) A margin account that is transferred from one creditor to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this part has been satisfied.

(2) A margin account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this part, may be treated as if it had been maintained for the transferee from the date of its origin, if the creditor accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

[48 FR 23165, May 24, 1983, as amended at 50 FR 26355, June 26, 1985]

§ 220.6 Special memorandum account.

(a) A special memorandum account (SMA) may be maintained in conjunction with a margin account. A single entry amount may be used to represent both a credit to the SMA and a debit to the margin account. A transfer between the two accounts may be effected by an increase or reduction in the entry. When computing the equity in a margin account, the single entry amount shall be considered as a debit in the margin account. A payment to the customer or on the customer's behalf or a transfer to any of the customer's other accounts from the SMA reduces the single entry amount.

(b) The SMA may contain the following entries:

(1) Dividend and interest payments;

(2) Cash not required by this part, including cash deposited to meet a maintenance margin call or to meet any requirement of a self-regulatory organization that is not imposed by this part;

(3) Proceeds of a sale of securities or cash no longer required on any expired or liquidated security position that may be withdrawn under § 220.4(e) of this part; and

(4) Margin excess transferred from the margin account under § 220.4(e)(2) of this part.

§ 220.7 Arbitrage account.

In an arbitrage account a creditor may effect and finance for any customer *bona fide* arbitrage transactions. For the purpose of this section, the term "*bona fide* arbitrage" means:

(a) A purchase or sale of a security in one market together with an offsetting sale or purchase of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in prices in the two markets, or

(b) A purchase of a security which is, without restriction other then the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the prices of the two securities.

§ 220.8 Cash account.

(a) *Permissible transactions.* In a cash account, a creditor, may:

(1) Buy for or sell to any customer any security if: (i) There are sufficient funds in the accounts; or (ii) the creditor accepts in good faith the customer's agreement that the customer will promptly make full cash payment for the security before selling it and does not contemplate selling it prior to making such payment;

(2) Buy from or sell for any customer any security if: (i) The security is held in the account; or (ii) the creditor accepts in good faith the customer's statement that the security is owned by the customer or the customer's principal, and that it will be promptly deposited in the account;

(3) Issue, endorse, or guarantee an option for any customer if:

(i) In the case of a call option, the underlying security (or a security immediately convertible into the underlying security, without the payment of money) is held in or purchased for the account on the same day, and the option premium is held in the account until cash payment for the underlying or convertible security is received; or

(ii) In the case of a put option, the creditor obtains cash in an amount equal to the exercise price or holds in the account any of the following instruments with a current market value at least equal to the exerecise price and with one year or less to maturity: securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, or bankers acceptances issued by banking institutions in the United States and payable in the United States.

(4) Use an escrow agreement in lieu of the cash or underlying security position if:

(i) In the case of a call or a put, the creditor is advised by the customer that the required securities or cash are held by a bank and the creditor independently verifies that an appropriate escrow agreement will be delivered by the bank promptly; or

(ii) In the case of a call issued, endorsed, or guaranteed on the same day the underlying security is purchased in the account and the underlying security is to be delivered to a bank, the creditor verifies that an appropiate escrow agreement will be delivered by the bank promptly.

(b) *Time periods for payment; cancellation or liquidation*—(1) *Full cash payment*. A creditor shall obtain full cash payment for customer purchases within 7 business days of the date:

(i) Any nonexempted security was purchased;

(ii) Any unissued security was made available by the issuer for delivery to purchasers;

(iii) Any "when distributed" security was distributed under a published plan;

(iv) A security owned by the customer has matured or has been redeemed and a new refunding security of the same issuer has been purchased by the customer, provided:

(A) The customer purchased the new security no more than 35 calendar days prior to the date of maturity or redemption of the old security;

(B) The customer is entitled to the proceeds of the redemption; and

(C) The delayed payment does not exceed 103 percent of the proceeds of the old security.

(2) *Delivery against payment*. If a creditor purchases for or sells to a customer a security in a delivery against payment transaction, the creditor shall have up to 35 calendar days to obtain payment if delivery of the security is delayed due to the mechanics of the transaction and is not related to the customer's willingness or ability to pay.

(3) *Shipment of securities, extension*. If any shipment of securities is incidental to consummation of a transaction, a creditor may extend the 7 business day period by the number of days required for shipment, but not by more than 7 business days.

(4) *Cancellation; liquidation; minimum amount*. A creditor shall promptly cancel or otherwise liquidate a transaction or any part of a transaction for which the customer has not made full cash payment within the required time. A creditor may, at its option, disregard any sum due from the customer not exceeding $500.

(c) *90 day freeze*. (1) If a nonexempted security in the account is sold or delivered to another broker or dealer without having been previously paid for in full by the customer, the privilege of delaying payment beyond the trade date shall be withdrawn for 90 calendar days following the date of sale of the security. Cancellation of the transaction other than to correct an error shall constitute a sale.

(2) The 90 day freeze shall not apply if: (i) Within 7 business days of the trade date, full payment is received or any check or draft in payment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or (ii) the purchased security was delivered to another broker or dealer for deposit in a cash account which holds sufficient funds to pay for the security. The creditor may rely on a written statement accepted in good faith from the other broker or dealer that sufficient funds are held in the other cash account.

(d) *Extension of time periods; transfers*. (1) Unless a self-regulatory organization or association believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action, it may, upon application by the creditor:

(i) Extend any period specified in paragraph (b) of this section;

(ii) Authorize transfer to another account of any transaction involving the purchase of a margin or exempted security; or

(iii) Grant a waiver from the 90 day freeze.

(2) Applications shall be filed and acted upon prior to the end of the 7 day period or the expiration of any subsequent extension. However, an application filed from firms having no direct electronic access to the exchange or association may be accepted as timely filed if it is postmarked no later than midnight of the last day of the 7 day period or any subsequent extension.

§ 220.9 Nonsecurities credit and employee stock ownership account.

(a) In a nonsecurities credit account a creditor may:

(1) Effect and carry transactions in commodities;

(2) Effect and carry transactions in foreign exchange;

(3) Extend and maintain secured or unsecured nonpurpose credit, subject to the requirements of paragraph (b) of this section.

(4) Extend and maintain credit to employee stock ownership plans without regard to the other sections of this part.

(b) Every extension of credit, except as provided in paragraphs (a) (1) and (2) of this section, shall be deemed to be purpose credit unless, prior to extending the credit, the creditor accepts in good faith from the customer a written statement that it is not purpose credit. The statement shall conform to the requirements established by the Board. To accept the customer's statement in good faith, the creditor shall be aware of the circumstances surrounding the extension of credit and shall be satisfied that the statement is truthful.

[48 FR 23165, May 24, 1983, as amended at 50 FR 26356, June 26, 1985]

§ 220.10 Omnibus account.

(a) In an omnibus account, a creditor may effect and finance transactions for a broker or dealer who is registered with the SEC under section 15 of the Act and who gives the creditor written notice that:

(1) All securities will be for the account of customers of the broker or dealer; and

(2) Any short sales effected will be short sales made on behalf of the customers of the broker or dealer other than partners.

(b) The written notice required by paragraph (a) shall conform to any SEC rule on the hypothecation of customers' securities by brokers or dealers.

§ 220.11 Broker-dealer credit account.

(a) *Permissible transactions.* In a broker-dealer credit account, a creditor may:

(1) Purchase any security from or sell any security to another creditor under a good faith agreement to promptly deliver the security against full payment of the purchase price.

(2) Effect or finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors.

(3) Extend and maintain credit to any partner or stockholder of the creditor for the purpose of making a capital contribution to, or purchasing stock of, the creditor, affiliated corporation or another creditor.

(4) Extend and maintain, with the approval of the appropriate examining authority:

(i) Credit to meet the emergency needs of any creditor; or

(ii) Subordinated credit to another creditor for capital purposes, if the other creditor:

(A) Is an affiliated corporation; or

(B) Will not use the proceeds of the loan to increase the amount of dealing in securities for the account of the creditor, its firm or corporation or an affiliated corporation.

(b) For purposes of paragraphs (a) (3) and (4) of this section "affiliated corporation" means a corporation all the common stock of which is owned directly or indirectly by the firm or general partners and employees of the firm, or by the corporation or holders of the controlling stock and employees of the corporation and the affiliation has been approved by the creditor's examining authority.

§ 220.12 Market functions account.

(a) *Requirements.* In a market functions account, a creditor may effect or finance the transactions of market participants in accordance with the following provisions. A separate record shall be kept for the transactions specified for each category described in paragraphs (b) through (e) of this section. Any position in a separate record shall not be used to meet the requirements of any other category.

(b) *Specialists*—(1) *Applicability.* A creditor may clear or finance specialist transactions for any specialist, or any specialist joint account, in which all participants, or all participants other than the creditor, are registered as specialists on a national securities exchange that requires regular reports on the use of specialist credit from the registered specialists.

(2) *Permitted offset positions.* A specialist in options may establish, on a share-for-share basis, a long or short position in the securities underlying the options in which the specialist makes a market, and a specialist in securities other than options may purchase or write options overlying the securities in which the specialist makes a market, if the account holds the following permitted offset positions:

(i) A short option position which is "in or at the money" and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security which is "in the money";

(ii) A long option position which is "in or at the money" and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security which is "in the money";

(iii) A short option position against which an exercise notice was tendered;

(iv) A long option position which was exercised;

(v) A net long position in a security (other than an option) in which the specialist makes a market; or

(vi) A net short position in a security (other than an option) in which the specialist makes a market.

(3) *Required margin.* The required margin for a specialist's transactions shall be:

(i) Good faith margin for any long or short position in a security in which the specialist makes a market;

(ii) Good faith margin for any wholly-owned margin security or exempted security;

(iii) The margin prescribed by § 220.18 (the Supplement) when a security purchased or sold short in the account does not qualify as a specialist or permitted offset position.

(4) *Additional margin; restriction on "free-riding."* (i) Except as required by paragraph (b)(5) of this section, the creditor shall issue a margin call on any day when additional margin is required as a result of specialist transactions. The creditor may allow the specialist a maximum of 7 business days to satisfy a margin call.

(ii) If a specialist fails to satisfy a margin call within the period specified in this paragraph (and the creditor is required to liquidate securities to satisfy the call), the creditor shall be prohibited for a 15 calendar day period from extending any further credit to the specialist to finance transactions in nonspecialty securities.

(iii) The restriction on "free-riding" shall not apply to:

(A) Any specialist on a national securities exchange that has an SEC-approved rule on "free-riding" by specialists; or (B) the acquisition or liquidation of a permitted offset position.

(5) *Deficit status.* On any day when a specialist's separate record would liquidate to a deficit, the creditor shall not extend any further specialist credit in the account and shall issue a margin call at least as large as the deficit. If the call is not met by noon of the following business day, the creditor shall liquidate positions in the specialist's account.

(6) *Withdrawals.* Withdrawals may be permitted to the extent that the equity exceeds the margin requirements specified in paragraph (b)(3) of this section.

(c) *Underwritings and distributions.* A creditor may effect or finance for any dealer or group of dealers transactions for the purpose of facilitating the underwriting or distribution of all or a part of an issue of securities with a good faith margin.

(d) *OTC Marketmakers and Third Marketmakers.* (1) A creditor may clear or finance with a good faith margin, marketmaking transactions for an OTC marketmaker or a third marketmaker who:

(i) Is in compliance with any applicable SEC rule, including minimum net capital rules;

(ii) Regularly submits *bona fide* competitive bid and offer quotations to a recognized inter-dealer quotation system;

(iii) Is ready, willing, and able to effect transactions in reasonable amounts with other brokers and dealers at the quoted prices; and

(iv) Has a reasonable average rate of inventory turnover.

(2) If the credit extended to a marketmaker ceases to be for the purpose of marketmaking, or the dealer ceases to be a marketmaker for an issue of securities for which credit was extended, the credit shall be subject to the margin specified in § 220.18 (the Supplement).

(e) *Odd-lot dealers.* A creditor may clear and finance odd-lot transactions for any creditor who is registered as an odd-lot dealer on a national securities exchange with a good faith margin.

[48 FR 23165, May 24, 1983; 48 FR 26590, June 9, 1983]

§ 220.13 Arranging for loans by others.

A creditor may not arrange for the extension or maintenance of credit to or for any customer by any person upon terms and conditions other than those upon which the creditor may itself extend or maintain credit under the provisions of this part, except that this limitation shall not apply to credit arranged for a customer which does not violate parts 207 and 221 of this chapter and results solely from:

(a) Investment banking services, provided by the creditor to the customer, including, but not limited to, underwritings, private placements, and advice and other services in connection with exchange offers, mergers, or acquisitions, except for underwritings that involve the public distribution of an equity security with installment or other deferred payment provisions; or

(b) The sales of nonmargin securities (including securities with installment or other deferred payment provisions) if the sale is exempted from the registration requirements of the Securities Act of 1933 under section 4(2) of section 4(6) of the Act; or

(c) A subsequent loan or advance on a face-amount certificate as permitted under 15 U.S.C. 80a-28(d).

[50 FR 10934, Mar. 19, 1985]

§ 220.14 Clearance of securities.

(a) *Credit for clearance of securities.* The provisions of this part shall not apply to the extension or maintenance of any credit that is not for more than one day if it is incidental to the clearance of transactions in securities directly between members of a national securities exchange or association or through any clearing agency registered with the SEC.

(b) *Deposit of securities with options clearing agency.* The provisions of this part shall not apply to the deposit of securities with an options clearing agency for the purpose of meeting its deposit requirements if:

(1) The clearing agency issues options on securities;

(2) The clearing agency is registered with the SEC; and

(3) The deposit consists of any margin security and complies with the rules of the clearing agency which have been approved by the SEC.

[48 FR 23165, May 24, 1983, as amended at 49 FR 9560, Mar. 14, 1984; 49 FR 27295, July 3, 1984]

§ 220.15 Borrowing by creditors.

(a) *Restrictions on borrowing.* A creditor may not borrow in the ordinary course of business as a broker or dealer using as collateral any registered nonexempted security, except:

(1) From or through a member bank of the Federal Reserve System; or

(2) From any nonmember bank that has filed with the Board an agreement as prescribed in paragraph (b) of this section, which agreement is still in effect; or

(3) From another creditor if the loan is permissible under this part.

(b) *Agreements of nonmember banks.* (1) A nonmember bank shall file an agreement that conforms to the requirements of section 8(a) of the Act (See Form F.R. T-2) if:

(i) Its principal place of business is in a territory or insular possession of the United States; or

(ii) It has an office or agency in the United States and its principal place of business is outside the United States.

(2) Any other nonmember bank shall file an agreement that conforms to the requirements of section 8(a) of the Act (See From F.R. T-1).

(3) Any nonmember bank may terminate its agreement if it obtains the written consent of the Board.

§ 220.16 Borrowing and lending securities.

Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. Each borrowing shall be secured by a deposit of one or more of the following: cash, securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit and bankers acceptances issued by banking institutions in the United States and payable in the United States, or irrevocable letters of credit issued by a bank insured by the Federal Deposit Insurance Corporation or a foreign bank that has filed an agreement with the Board on Form F.R. T-2. Such deposit made with the lender of the securities shall have at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day.

§ 220.17 Requirements for list of OTC margin stocks.

(a) *Requirements for inclusion on the list.* Except as provided in paragraph (d) of this section, OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share.

(3) The stock is registered under section 12 of the Act, is issued by an insurance company subject to section 12(g)(2)(G) of the Act, is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock as determined by the Board, is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list.* Except as provided in paragraph (d) of this section, OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stocks, as determined by the Board, is at least $2 per share;

(3) The stock is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The issuer has at least $1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Removal from the list.* The Board shall periodically remove from the list any stock that:

(1) Ceases to exist or of which the issuer ceases to exist, or

(2) No longer substantially meets the provisions of paragraph (b) of this section or § 220.2(s).

(d) *Discretionary authority of Board.* Without regard to the other paragraphs of this section, the Board may add to, or omit or remove from the OTC margin stock list, any equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(e) *Unlawful representations.* It shall be unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of OTC margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the list or stocks on that list shall be an unlawful representation.

[48 FR 23165, May 24, 1983; 48 FR 34945, Aug. 2, 1983]

§ 220.18 Supplement: Margin Requirements.

The required margin for each security position held in a margin account shall be as follows:

(a) Margin equity security, except for an exempted security or a long position in an option: 50 percent of the current market value of the security.

(b) Exempted security, registered nonconvertible debt security or OTC margin bond: The margin required by the creditor in good faith.

(c) Short sale of nonexempted security: 150 percent of the current market value of the security, or 100 percent of the current market value if a security exchangeable or convertible within 90 calendar days without restriction other than the payment of money into the security sold short is held in the account.

(d) Short sale of an exempted security: 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

(e) Nonmargin, nonexempted security or a long position in any option: 100 percent of the current market value.

(f) Short put or short call on a security, certificate of deposit, securities index or foreign currency:

(1) In the case of puts and calls issued by a registered clearing corporation and listed or traded on a registered national securities exchange or a registered securities association, the amount, or other position (except in the case of an option on an equity security), specified by the rules of the registered national securities exchange or the registered securities association authorized to trade the option, provided that all such rules have been approved or amended by the SEC; or

(2) In the case of all other puts and calls, the amount, or other position (except in the case of an option on an equity security), specified by the maintenance rules of the creditor's self-regulatory organization.

[50 FR 26356, June 26, 1985]

INTERPRETATIONS

§ 220.101 Transactions of customers who are brokers or dealers.

The Board has recently considered certain questions regarding transactions of customers who are brokers or dealers.

(a) The first question was whether delivery and payment under

§ 220.4(f)(3) must be exactly simultaneous (such as in sight draft shipments), or whether it is sufficient if the broker-dealer customer, "as promptly as practicable in accordance with the ordinary usage of the trade," mails or otherwise delivers to the creditor a check in settlement of the transaction, the check being accompanied by instructions for transfer or delivery of the security. The Board ruled that the latter method of setting the transaction is permissible.

(b) The second question was, in effect, whether the limitations of § 220.4(c)(8) apply to the account of a customer who is himself a broker or dealer. The answer is that the provision applies to any "special cash account," regardless of the type of customer.

(c) The third question was, in effect, whether a purchase and a sale of an unissued security under § 220.4(f)(3) may be offset against each other, or whether each must be settled separately by what would amount to delivery of the security to settle one transaction and its redelivery to settle the other. The answer is that it is permissible to offset the transactions against each other without physical delivery and redelivery of the security.

[11 FR 14155, Dec. 7, 1946]

§ 220.102 [Reserved]

§ 220.103 Borrowing of securities.

(a) The Board of Governors has been asked for a ruling as to whether § 220.6(h), which deals with borrowing and lending of securities, applies to a borrower of securities if the lender is a private individual, as contrasted with a member of a national securities exchange or a broker or dealer.

(b) Section 220.6(h) does not require that the lender of the securities in such a case be a member of a national securities exchange or a broker or dealer. Therefore, a borrowing of securities may be able to qualify under the provision even though the lender is a private individual, and this is true whether the security is registered on a national securities exchange or is unregistered. In borrowing securities from a private individual under § 220.6(h), however, it becomes especially important to bear in mind two limitations that are contained in the section.

(c) The first limitation is that the section applies only if the broker borrows the securities for the purpose specified in the provision, that is, "for the purpose of making delivery of such securities in the case of short sales, failure to receive securities he is required to deliver, or other similar cases". The present language of the provision does not require that the delivery for which the securities are borrowed must be on a transaction which the borrower has himself made, either as agent or as principal; he may borrow under the provision in order to relend to someone else for the latter person to make such a delivery. However, the borrowing must be related to an actual delivery of the type specified—a delivery in connection with a specific transaction that has already occurred or is in immediate prospect. The provision does not authorize a broker to borrow securities (or make the related deposit) merely in order that he or some other broker may have the securities "on hand" or may anticipate some need that may or may not arise in the future.

(d) The ruling in the 1940 Federal Reserve Bulletin, at page 647, is an example of a borrowing which, on the facts as given, did not meet the requirement. There, the broker wished to borrow stocks with the understanding that he "would offer to lend this stock in the 'loan crowd' on a national securities exchange." There was no assurance that the stocks would be used for the purpose specified in § 220.6(h); they might be, or they might merely be held idle while the person lending the stocks had the use of the funds deposited against them. The ruling held in effect that since the borrowing could not qualify under § 220.6(h) it must comply with other applicable provisions of the regulation.

(e) The second requirement is that the deposit of cash against the borrowed securities must be "bona fide." This requirement naturally cannot be spelled out in detail, but it requires at least that the purpose of the broker in making the deposit should be to obtain the securities for the specified purpose, and that he should not use the arrangement as a means of accommodating a customer who is seeking to obtain more funds than he could get in a general account.

(f) The Board recognizes that even with these requirements there is still some possibility that the provision may be misapplied. The Board is reluctant to impose additional burdens on legitimate transactions by tightening the provision. If there should be evidence of abuses developing under the provision, however, it would become necessary to consider making it more restricted.

[12 FR 5278, Aug. 2, 1947]

§ 220.104 [Reserved]

§ 220.105 Ninety-day rule in special cash account.

(a) Section 220.4(c)(8) places a limitation on a special cash account if a security other than an exempted security has been purchased in the account and "without having been previously paid for in full by the customer * * * has been * * * delivered out to any broker or dealer." The limitation is that during the succeeding 90 days the customer may not purchase a security in the account other than an exempted security unless funds sufficient for the purpose are held in the account. In other words, the privilege of delayed payment in such an account is withdrawn during the 90-day period.

(b) The Board recently considered a question as to whether the following situation makes an account subject to the 90-day disqualification: A customer purchases registered security ABC in a special cash account. The broker executes the order in good faith as a bona fide cash transaction, expecting to obtain full cash payment promptly. The next day, the customer sells registered security XYZ in the account, promising to deposit it promptly in the account. The proceeds of the sale are equal to or greater than the cost of security ABC. After both sale and purchase have been made, the customer requests the broker to deliver security ABC to a different broker, to receive security XYZ from that broker at about the same time, and to settle with the other broker—such settlement to be made either by paying the cost of security XYZ to the other broker and receiving from him the cost of security ABC, or by merely settling any difference between these amounts.

(c) The Board expressed the view that the account becomes subject to the 90-day disqualification in § 220.4(c)(8). In the instant case, unlike that described at 1940 Federal Reserve Bulletin 772, the security sold is not held in the account and is not to be deposited in it unconditionally. It is to be obtained only against the delivery to the other broker of the security which had been purchased. Hence payment can not be said to have been made prior to such delivery; the purchased security has been delivered out to a broker without previously having been paid for in full, and the account becomes subject to the 90-day disqualification.

[13 FR 2368, May 1, 1948]

§ 220.106 Designation of New York Stock Exchange for purposes of specialists transactions.

As amended effective July 20, 1949, § 220.4(g) removes the margin requirements applicable to credit for financing the functions of "specialists" on an exchange designated by the Board of Governors of the Federal Reserve System.

Effective July 20, 1949, the Board of Governors of the Federal Reserve System has designated the New York Stock Exchange pursuant to § 220.4(g), as amended, this designation to be effective until further notice.

[14 FR 4665, July 27, 1949]

§ 220.107 Transactions in undermargined accounts.

(a) In an interpretation published at § 220.104 (13 FR 1791), the Board considered two questions in connection with the rules applicable at that time to withdrawals of cash or securities from an undermargined general account under this part.

(b) One question related to the purchase of an unregistered nonexempted security in the account. The other concerned a case in which a security held in the account was sold, delivery was delayed by borrowing a security rather than delivering the security held in the account, and the security held in the account was used later to settle the short position.

(c) The conclusions on both points were based on the provisions of this part in effect at the time regarding withdrawals from such accounts. Those withdrawal provisions were changed by an amendment, effective May 1, 1949 (§ 220.4(c)(7) and (8)), and the Board has been asked regarding the application of the new withdrawal rules to such situations. It has expressed the following views:

NOTE: Without reference to the preceding language or to paragraph (d) of this section, the amendment of Regulation T at 24 FR 4697 superseded the following subparagraphs (1) and (2):

(1) Unregistered securities cannot be carried on margin and accordingly a deposit equal to the full cost of any unregistered securities purchased in the account must, of course, be obtained. However, a purchase of unregistered securities in the general account may now be treated as a transaction other than a withdrawal, and accordingly the deposit equal to such cost may be obtained within the three-day period specified in § 220.3(b) and (e).

(2) With respect to the case in which a customer wishes to sell a security that is held in the account and to delay delivery by borrowing a security rather than delivering the one held in the account, the present withdrawal rules permit the sale to be treated as a short sale against which margin is not required and permit the transaction to be treated as completed when the security held in the account is delivered later to close out the short position. Accordingly, it is now permissible for an offsetting transaction to take place on the date when the delivery is so made.

(d) This supersedes the ruling referred to above at § 220.104. (That ruling also pointed out that the "good faith loan value" specified for an exempted security means the amount which the broker would customarily lend on the security, and that the figure can not be arbitrarily reduced merely for the purpose of permitting a later substitution of registered securities for exempted securities. That principle is still correct, but is of limited application in view of the provisions now contained in this part for withdrawals and substitutions of securities.)

[14 FR 4657, Aug. 5, 1949]

§ 220.108 International Bank Securities.

(a) Section 2 of the Act of June 29, 1949 (Pub. L. 142—81st Congress), amended the Bretton Woods Agreements Act by adding a new section numbered 15 providing, in part, that "Any securities issued by International Bank for Reconstruction and Development (including any guaranty by the bank, whether or not limited in scope), and any securities guaranteed by the bank as to both principal and interest, shall be deemed to be exempted securities within the meaning of * * * paragraph (a)(12) of section 3 of the [Securities Exchange] Act of June 6, 1934, as amended (15 U.S.C. 78c). * * *".

(b) In response to inquiries with respect to the applicability of the margin requirements of this part to securities issued or guaranteed by the International Bank for Reconstruction and Development, the Board has replied that, as a result of this enactment, securities issued by the Bank are now classified as exempted securities under § 220.2(e). Such securities are now in the same category under this part as are United States Government, State and municipal bonds. Accordingly, the specific percentage limitations prescribed by this part with respect to maximum loan value and margin requirements are no longer applicable thereto.

[14 FR 5505, Sept. 7, 1949]

§ 220.109 Arrangement for credit by brokers or dealers.

(a) The Securities Exchange Act of 1934 and this part issued thereunder, provide in substance that any broker or dealer who is subject to this part shall not extend or maintain any credit on unregistered securities (i.e., securities not registered on a national securities exchange). The act (section 7(c)) and § 220.7(a) also provides in substance that any such broker or dealer shall not arrange for any extension or maintenance of credit on unregistered securities. There are certain exceptions to these prohibitions, but they are not relevant to the present question.

(b) The Board has been asked whether there would be a violation of the above-mentioned prohibition against arranging credit on unregistered securities if a broker or dealer who is subject to this Part 220 participated in a certain financing plan which a national bank has under consideration. The proposed plan would finance the purchase of shares which are issued by so-called open-end investment trusts and which are not registered on any national securities exchange.

(c) The shares are on continuous sale and can be acquired by periodic cash purchases without the need for any bank financing. However, the bank proposes to make loans to prospective purchasers for the purpose of financing the purchase of larger amounts of the investment trust shares. The shares would be pledged to secure the loan, and the borrower would undertake to pay the principal and interest on the loan in monthly installments.

(d) The bank would furnish forms of a credit application and note to security dealers and their salesmen, who would then make them available to the customers to whom they are selling or contemplate selling the investment trust shares. When the forms had been completed and executed, the dealers would return them to the bank.

(e) The bank would have complete discretion as to whether or not to approve any such application. The bank would not pay any fees or commissions to the security dealers, although the dealers would, of course, get the benefit of increased security sales that might result from operation of the plan.

(f) Upon consideration of the various aspects of the proposed plan, the Board of Governors is of the opinion that if any broker or dealer who is subject to this part participated in the plan in the manner contemplated, there would be an arranging for the extension or maintenance of credit on unregistered securities in violation of section 7(c) of the Securities Exchange Act of 1934 and § 220.7(a).

[17 FR 9584, Oct. 22, 1952]

§ 220.110 Assistance by Federal credit union to its members.

(a) An inquiry was presented recently concerning the application of this part or Part 221 of this subchapter, to a plan proposed by a Federal credit union to aid its members in purchasing stock of a corporation whose subsidiary apparently was the employer of all the credit union's members.

(b) From the information submitted, the plan appeared to contemplate that the Federal credit union would accept orders from its members for registered common stock of the parent corporation in multiples of 5 shares; that whenever orders had been so received for a total of 100 shares, the credit union, as agent for such members, would execute the orders through a brokerage firm with membership on a national securities exchange; that the brokerage firm would deliver certificates for the stock, registered in the names of the individual purchasers, to the credit union against payment by the credit union; that the credit union would prorate the total amount so paid, including the brokerage fee, among the individual purchasers according to the number of shares purchased by them; and that a savings in brokerage fee resulting from the 100-lot purchases would be passed on by the credit union to the individual purchasers of the stock. However, amounts of the stock less than 100 shares would be purchased by the credit union through the brokerage firm for any members willing to forego such savings.

(c) It appeared further that the Federal credit union members for whom stock was so purchased would reimburse the credit union (1) by cash payment, (2) by the proceeds of withdrawn shares of the credit union, (3) by the proceeds of an installment loan from the credit union collateraled by the stock purchased, or by (4) by a combination of two or more of the above methods. To assist the collection of any such loan, the employer of the credit union members would provide payroll deductions. Apparently, sales by the credit union of any of the stock purchased by one of its members would occur only in satisfaction of a delinquent loan balance. In no case did it appear that the credit union would make a charge for arranging the execution of transactions in the stock for its members.

(d) The Board was of the view that, from the facts as presented, it did not appear that the Federal credit union should be regarded as the type of institution to which Part 221 of this subchapter, in its present form, applied.

(e) With respect to this part, the question was whether the activities of the Federal credit union under the proposal, or otherwise, might be such as to bring it within the meaning of the terms "broker" or "dealer" as used in the part and the Securities Exchange Act of 1934. The Board observed that this, of course, was a question of fact that necessarily depended upon the circumstances of the particular case, including the manner in which the arrangement in question might be carried out in practice.

(f) On the basis of the information submitted, however, it did not appear to the Board that the Federal credit union should be regarded as being subject to this part as a "broker or dealer who transacts a business in securities through the medium of" a member firm solely because of its activities as contemplated by the proposal in question. The Board stated that the part rather clearly would not apply if there appeared to be nothing other than loans by the credit union to its members to finance purchases made directly by them of stock of the parent corporation of the employer of the member-borrowers. The additional fact that the credit union, as agent, would purchase such stock for its members (even though all such purchases might not be financed by credit union loans) was not viewed by the Board as sufficient to make the regulation applicable where, as from the facts presented, it did not appear that the credit union in any case was to make any charge or receive any compensation for assisting in such purchases or that the credit union otherwise was engaged in securities activities. However, the Board stated that matters of this kind must be examined closely for any variations that might suggest the inapplicability of the foregoing.

[18 FR 4592, Aug. 5, 1953]

§ 220.111 Arranging for extensions of credit to be made by a bank.

(a) The Board has recently had occasion to express opinions regarding the requirements which apply when a person subject to this part (for convenience, called here simply a broker) arranges for a bank to extend credit.

(b) The matter is treated generally in § 220.7(a) and is also subject to the general rule of law that any person who aids or abets a violation of law by another is himself guilty of a violation. It may be stated as a general principle that any person who arranges for credit to be extended by someone else has a responsibility so to conduct his activities as not to be a participant in a violation of this part, which applies to brokers, or Part 221 of this subchapter, which applies to banks.

(c) More specifically, in arranging an extension of credit that may be subject to Part 221 of this subchapter, a broker must act in good faith and, therefore, must question the accuracy of any non-purpose statement (i.e., a statement that the loan is not for the purpose of purchasing or carrying registered stocks) given in connection with the loan where the circumstances are such that the broker from any source knows or has reason to know that the statement is incomplete or otherwise inaccurate as to the true purpose of the credit. The requirement of "good faith" is of vital importance. While the application of the requirement will necessarily vary with the facts of the particular case, the broker, like the bank for whom the loan is arranged to be made, must be alert to the circumstances surrounding the loan. Thus, for example, if a broker or dealer is to deliver registered stocks to secure the loan or is to receive the proceeds of the loan, the broker arranging the loan and the bank making it would be put on notice that the loan would probably be subject to Part 221 of this subchapter. In any such circumstances they could not in good faith accept or rely upon a statement to the contrary without obtaining a reliable and satisfactory explanation of the situation. The foregoing, of course, applies the principles contained in § 221.101 of this subchapter.

(d) In addition, when a broker is approached by another broker to arrange extensions of credit for customers of the approaching broker, the broker approached has a responsibility not to arrange any extension of credit which the approaching broker could not himself arrange. Accordingly, in such cases the statutes and regulations forbid the approached broker to arrange extensions of credit on unregistered securities for the purpose of purchasing or carrying either registered or unregistered securities. The approaching broker would also be violating the applicable requirements if he initiated or otherwise participated in any such forbidden transactions.

(e) The expression of views, set forth in this section, to the effect that certain specific transactions are forbidden, of course, should not in any way be understood to indicate approval of any other transactions which are not mentioned.

[18 FR 5505, Sept. 15, 1953]

§ 220.112 Arranging loan to purchase open-end investment company shares.

(a) The Board was recently asked whether a creditor subject to this part may arrange for a customer a loan from a bank subject to Part 221 on unregistered, redeemable shares of an open-end investment company for the purpose of purchasing such shares.

(b) This matter was the subject of the Board's interpretation contained in § 220.109 which stated, in substance, that a creditor subject to this part may not arrange for the extension or maintenance of credit on unregistered, redeemable shares of an open-end investment company in view of the provisions of section 7(c) of the Securities Exchange Act of 1934 and § 220.7(a). The shares of most open-end investment companies, of course, are not registered on any national securities exchange.

(c) It was suggested, however, that the interpretation just referred to might now be inapplicable because of amendment to § 221.3(b) and (c) of this subchapter, effective August 1, 1953. Under that amendment, loans by banks for the purpose of purchasing or carrying redeemable shares of open-end investment companies, whose assets customarily include registered securities, shall be deemed to be loans for the purpose of purchasing or carrying registered stocks. Therefore, any such loan, if secured directly or indirectly by any stock, is subject to Part 221 of this subchapter although the shares of the company are not themselves registered shares.

(d) In announcing the amendment mentioned in paragraph (c) of this section, the Board in 18 FR 3409 stated, among other things, that such amendment "does not affect Part 220." In addition, the Board's interpretation contained in § 220.111 stated that a creditor subject to this part may not arrange extensions of credit on unregistered securities for the purpose of purchasing or carrying either registered or unregistered securities.

(e) Accordingly, the Board stated that its interpretation contained in § 220.109, referred to in this section, is still effective, and that a creditor subject to this part may not arrange for a customer a bank loan on unregistered, redeemable shares of an open-end investment company for the purpose of purchasing or carrying such shares.

[20 FR 1642, Mar. 18, 1955]

§ 220.113 Necessity for prompt payment and delivery in special cash accounts.

(a) The Board of Governors recently received an inquiry concerning whether purchases of securities by certain municipal employees' retirement or pension systems on the basis of arrangements for delayed delivery and payment, might properly be effected by a creditor subject to this part in a special cash account under § 220.4(c).

(b) It appears that in a typical case the supervisors of the retirement system meet only once or twice each month, at which times decisions are made to purchase any securities wished to be acquired for the system.

Although the securities are available for prompt delivery by the broker-dealer firm selected to effect the system's purchase, it is arranged in advance with the firm that the system will not accept delivery and pay for the securities before some date more than seven business days after the date on which the securities are purchased. Apparently, such an arrangement is occasioned by the monthly or semimonthly meetings of the system's supervisors. It was indicated that a retirement system of this kind may be supervised by officials who administer it as an incidental part of their regular duties, and that meetings requiring joint action by two or more supervisors may be necessary under the system's rules and procedures to authorize issuance of checks in payment for the securities purchased. It was indicated also that the purchases do not involve exempted securities, securities of the kind covered by § 220.4(c)(3), or any shipment of securities as described in § 220.4(c).

(c) This part provides that a creditor subject thereto may not effect for a customer a purchase in a special cash account under § 220.4(c) unless the use of the account meets the limitations of § 220.4(a) and the purchase constitutes a "bona fide cash transaction" which complies with the eligibility requirements of § 220.4(c)(1)(i). One such requirement is that the purchase be made "in reliance upon an agreement accepted by the creditor (broker-dealer) in good faith" that the customer will "promptly make full cash payment for the security, if funds sufficient for the purpose are not already in the account; and, subject to certain exceptions, § 220.4(c)(2) provides that the creditor shall promptly cancel or liquidate the transaction if payment is not made by the customer within seven business days after the date of purchase. As indicated in the Board's interpretation at 1940 Federal Reserve Bulletin 1172, a necessary part of the customer's undertaking pursuant to § 220.4(c)(1)(i) is that he "should have the necessary means of payment readily available when he purchases a security in the special cash account. He should expect to pay for it immediately or in any event within the period (of not more than a very few days) that is as long as is usually required to carry through the ordinary securities transaction."

(d) The arrangements for delayed delivery and payment in the case presented to the Board and outlined above clearly would be inconsistent with the requirement of § 220.4(c)(1)(i) that the purchase be made in reliance upon an agreement accepted by the creditor in good faith that the customer will "promptly" make full cash payment for the security. Accordingly, the Board said that transactions of the kind in question would not qualify as a "bona fide cash transaction" and, therefore, could not properly be effected in a special cash account, unless a contrary conclusion would be justified by the exception in § 220.4(c)(5).

(e) Section 220.4(c)(5) provides that if the creditor, "acting in good faith in accordance with" § 220.4(c)(1), purchases a security for a customer "with the understanding that he is to deliver the security promptly to the customer, and the full cash payment is to be made promptly by the customer is to be made against such delivery", the creditor may at his option treat the transaction as one to which the period applicable under § 220.4(c)(2) is not the seven days therein specified but 35 days after the date of such purchase. It will be observed that the application of § 220.4 (c)(5) is specifically conditioned on the creditor acting in good faith in accordance with § 220.4(c)(1). As noted above, the existence of the arrangements for delayed delivery and payment in the case presented would prevent this condition from being met, since the customer could not be regarded as having agreed to make full cash payment "promptly". Furthermore, such arrangements clearly would be inconsistent with the requirement of § 220.4(c)(5) that the creditor "deliver the security promptly to the customer".

(f) Section 220.4(c)(5) was discussed in the Board's published interpretation, referred to above, which states that "it is not the purpose of (§ 220.4 (c)(5)) to allow additional time to customers for making payment. The 'prompt delivery' described in (§ 220.4 (c)(5)) is delivery which is to be made as soon as the broker or dealer can reasonably make it in view of the mechanics of the securities business and the bona fide usages of the trade. The provision merely recognizes the fact that in certain circumstances it is an established bona fide practice in the trade to obtain payment against delivery of the security to the customer, and the further fact that the mechanics of the trade, unrelated to the customer's readiness to pay, may sometimes delay such delivery to the customer".

(g) In the case presented, it appears that the only reason for the delay is related solely to the customer's readiness to pay and is in no way attributable to the mechanics of the securities business. Accordingly, it is the Board's view that the exception in § 220.4(c)(5) should not be regarded as permitting the transactions in question to be effected in a special cash account.

[22 FR 5954, July 27, 1957]

§ 220.114 Transactions in restricted accounts under amended withdrawal rules.

(a) Amendments to Part 220, effective June 15, 1959 (24 FR 3866), deal with withdrawals of collateral from a "restricted account", i.e., a general account in which the adjusted debit balance exceeds the maximum loan value of the securities. In that connection, an inquiry has been received regarding the application of the amended part to a purchase of unregistered nonexempted securities in such a "restricted account".

(b) Unregistered nonexempted securities have no loan value under the part, are not subject to the restrictions of the withdrawal rules, and are not referred to in those rules. Purchase of an unregistered security without a deposit of a sum equal to the cost would amount to a withdrawal of the cost of the security.

(c) This supersedes paragraph (c)(1) of § 220.107 dealing with a similar question.

(d) Section 220.107 also dealt with two other points. One was the treatment of certain transactions as short sales. Paragraph (c)(2) of § 220.107 was superseded by the June 15, 1959 amendment to paragraph (g) of § 220.3. The other point was that the "good faith loan value" specified for an exempted security means the amount which the broker would customarily lend on the security, and that the figure cannot be arbitrarily reduced merely for the purpose of permitting a later substitution of registered securities for exempted securities. That principle continues to apply and is of increased significance under the amendments.

[24 FR 4697, June 10, 1959]

§ 220.115 Short sales made prior to recent amendments, but covered subsequent thereto.

(a) The Board of Governors of the Federal Reserve System has been requested to consider the following situation relative to § 220.3(g) as amended June 15, 1959.

(b) Certain securities have been held "long" in a margin account, at least since early 1958. Subsequently, at various times in 1958 and on January 13, 1959, short sales of this same stock were executed in the account. The total shares involved in the short sales did not exceed the shares held in the "long" position. It is now desired to close out the short position by covering purchases.

(c) The applicable provision of § 220.3(g) reads as follows:

> For the purposes of this part (Regulation T), if a security has maximum loan value in the account under paragraph (c)(1) of this section, a sale of the same security (even though not the same certificate) in the account shall be deemed to be a long sale and shall not be deemed to be or treated as a short sale.

Under this provision, a short sale at the present time against a "long" position in the same security must be treated as a "long" sale. The subsequent covering transaction would therefore be treated as any other regular purchase and could not be executed as a covering purchase requiring no further margin. However, where the short sale against the "long" position was executed prior to June 15, 1959, the effective date of the above noted amendment to § 220.3(g), the sale would not lose its character as a "short" sale. The covering transactions, even if effected after June 15, 1959, could be treated as such, and under the provisions of this part, could be completed without obtaining further margin.

(d) This interpretation is expressly limited to the facts here presented. Any variation or addition to the circumstances might well alter the result expressed herein.

(e) Attention is further directed to § 220.7(e) which provides that nothing in this part shall prevent an exchange or a creditor from "further restricting" or requiring "additional security" in the extension or maintenance of any credit.

[24 FR 7496, Sept. 17, 1959]

§ 220.116 Simultaneous long and short positions in same margin account where short position is taken first.

(a) The Board has been asked whether the last sentence of § 220.3(g) applies when a customer first sells a registered security short in an undermargined account, then subsequently purchases the same security, instructing the broker to maintain long and short positions in that security.

(b) The last sentence of § 220.3(g) prohibits the concurrent carrying of long and short positions in the same registered security for the purposes of this part, regardless of which position is taken first. This result follows because the word "sale" is equivalent where the sense of the regulation requires it, to "sale position". Accordingly, where a security is purchased "long" in a margin account, and there is an existing short position in the same security in the account, the two positions must be "netted out" for purposes of the regulation.

[26 FR 794, Jan. 26, 1961]

§ 220.117 Exception to 90-day rule in special cash account.

(a) The Board of Governors has recently interpreted certain of the provisions of § 220.4(c)(8), with respect to the withdrawal of proceeds of a sale of stock in a "special cash account" when the stock has been sold out of the account prior to payment for its purchase.

(b) The specific factual situation presented may be summarized as follows:

> Customer purchased stock in a special cash account with a member firm on Day 1. On Day 3 customer sold the same stock at a profit. On Day 8 customer delivered his check for the cost of the purchase to the creditor (member firm). On Day 9 the creditor mailed to the customer a check for the proceeds of the sale.

(c) Section 220.4(c)(8) prohibits a creditor, as a general rule, from effecting a purchase of a security in a customer's special cash account if any security has been purchased in that account during the preceding 90 days and has then been sold in the account or delivered out to any broker or dealer without having been previously paid for in full by the customer. One exception to this general rule reads as follows:

> * * * The creditor may disregard for the purposes of this subparagraph (§ 220.4(c)(8)) a sale without prior payment provided full cash payment is received within the period described by subparagraph (2) of this paragraph (seven days after the date of purchase) and the customer has not withdrawn the proceeds of sale on or before the day on which such payment (and also final payment of any check received in that connection) is received. * * *

(d) Final payment of customer's check: (1) The first question is: When is the creditor to be regarded as having received "final payment of any check received" in connection with the purchase?

(2) The clear purpose of § 220.4(c)(8) is to prevent the use of the proceeds of sale of a stock by a customer to pay for its purchase—i.e., to prevent him from trading on the creditor's funds by being able to deposit the sale proceeds prior to presentment of his own check to the drawee bank. Thus, when a customer undertakes to pay for a purchase by check, that check does not constitute payment for the purchase, within the language and intent of the above-quoted exception in § 220.4(c)(8), until it has been honored by the drawee bank, indicating the sufficiency of his account to pay the check.

(3) The phrase "final payment of any check" is interpreted as above not-

withstanding § 220.6(f), which provides that:

> For the purposes of this part (Regulation T), a creditor may, at his option (1) treat the receipt in good faith of any check or draft drawn on a bank which in the ordinary course of business is payable on presentation, * * * as receipt of payment of the amount of such check, draft or order; * * *

This is a general provision substantially the same as language found in section 4(f) of Regulation T as originally promulgated in 1934. The language of the subject exception to the 90-day rule of § 220.4(c)(8), i.e., the exception based expressly on final "payment of any check," was added to the regulation in 1949 by an amendment directed at a specific type of situation. Because the exception is a special, more recent provision, and because § 220.6(f), if controlling, would permit the exception to undermine, to some extent, the effectiveness of the 90-day rule, sound principles of construction require that the phrase "final payment of any check" be given its literal and intended effect.

(4) There is no fixed period of time from the moment of receipt by the payee, or of deposit, within which it is certain that any check will be paid by the drawee bank. Therefore, in the rare case where the operation of the subject exception to § 220.4(c)(8) is necessary to avoid application of the 90-day rule, a creditor should ascertain (from his bank of deposit or otherwise) the fact of payment of a customer's check given for the purchase. Having so determined the day of final payment, the creditor can permit withdrawal on any subsequent day.

(e) Mailing as "withdrawal": (1) Also presented is the question whether the mailing to the customer of the creditor's check for the sale proceeds constitutes a withdrawal of such proceeds by the customer at the time of mailing so that, if the check for the sale proceeds is mailed on or before the day on which the customer's check for the purchase is finally paid, the 90-day rule applies. It may be that a check mailed one day will not ordinarily be received by the customer until the next. The Board is of the view, however, that when the check for sale proceeds is issued and released into the mails, the proceeds are to be regarded as withdrawn by the customer; a more liberal interpretation would open a way for circumvention. Accordingly, the creditor's check should not be mailed nor the sale proceeds otherwise released to the customer "on or before the day" on which payment for the purchase, including final payment of any check given for such payment, is received by the creditor, as determined in accordance with the principles stated herein.

(2) Applying the above principles to the schedule of transactions described in the second paragraph of this interpretation, the mailing of the creditor's check on "Day 9" would be consistent with the subject exception to § 220.4(c)(8), as interpreted herein, only if the customer's check was paid by the drawee bank on "Day 8".

[27 FR 3511, Apr. 12, 1962]

§ 220.118 Time of payment for mutual fund shares purchased in a special cash account.

(a) The Board has recently considered the question whether, in connection with the purchase of mutual fund shares in a "special cash account" under the provisions of this Part 220, the 7-day period with respect to liquidation for nonpayment is that described in § 220.4(c)(2) or that described in § 220.4(c)(3).

(b) Section 220.4(c)(2) provides as follows:

> In case a customer purchases a security (other than an exempted security) in the special cash account and does not make full cash payment for the security within 7 days after the date on which the security is so purchased, the creditor shall, except as provided in subparagraphs (3)-(7) of this paragraph, promptly cancel or otherwise liquidate the transaction or the unsettled portion thereof.

Section 220.4(c)(3), one of the exceptions referred to, provides in relevant part as follows:

> If the security when so purchased is an unissued security, the period applicable to the transaction under subparagraph (2) of this paragraph shall be 7 days after the date on which the security is made available by the issuer for delivery to purchasers.

(c) In the case presented, the shares of the mutual fund (open-end investment company) are technically not issued at the time they are sold by the underwriter and distributor. Several days may elapse from the date of sale before a certificate can be delivered by the transfer agent. The specific inquiry to the Board was, in effect, whether the 7-day period after which a purchase transaction must be liquidated or cancelled for nonpayment should run, in the case of mutual fund shares, from the time when a certificate for the purchased shares is available for delivery to the purchaser, instead of from the date of the purchase.

(d) Under the general rule of § 220.4(c)(2) that is applicable to purchases of outstanding securities, the 7-day period runs from the date of purchase without regard to the time required for the mechanical acts of transfer of ownership and delivery of a certificate. This rule is based on the principles governing the use of special cash accounts in accordance with which, in the absence of special circumstances, payment is to be made promptly upon the purchase of securities.

(e) The purpose of § 220.4(c)(3) is to recognize the fact that, when an issue of securities is to be issued at some fixed future date, a security that is a part of such issue can be purchased on a "when-issued" basis and that payment may reasonably be delayed until after such date of issue, subject to other basic conditions for transactions in a special cash account. Thus, unissued securities should be regarded as "made available for delivery to purchasers" on the date when they are substantially as available as outstanding securities are available upon purchase, and this would ordinarily be the designated date of issuance or, in the case of a stock dividend, the "payment date". In any case, the time required for the mechanics of transfer and delivery of a certificate is not material under § 220.4(c)(3) any more than it is under § 220.4(c)(2).

(f) Mutual fund shares are essentially available upon purchase to the same extent as outstanding securities. The mechanics of their issuance and of the delivery of certificates are not significantly different from the mechanics of transfer and delivery of certificates for shares of outstanding securities, and the issuance of mutual fund shares is not a future event in a sense that would warrant the extension of the time for payment beyond that afforded in the case of outstanding securities. Consequently, the Board has concluded that a purchase of mutual fund shares is not a purchase of an "unissued security" to which § 220.4(c)(3) applies, but is a transaction to which § 220.4(c)(2) applies.

[27 FR 10885, Nov. 8, 1962]

§ 220.119 Applicability of margin requirements to credit extended to corporation in connection with retirement of stock.

(a) The Board of Governors has been asked whether Part 220 was violated when a dealer in securities transferred to a corporation 4,161 shares of the stock of such corporation for a consideration of $33,288, of which only 10 percent was paid in cash.

(b) If the transaction was of a kind that must be included in the corporation's "general account" with the dealer (§ 220.3), it would involve an excessive extension of credit in violation of § 220.3 (b)(1). However, the transaction would be permissible if the transaction came within the scope of § 220.4(f)(8), which permits a "creditor" (such as the dealer) to "Extend and maintain credit to or for any customer without collateral or on any collateral whatever for any purpose other than purchasing or carrying or trading in securities." Accordingly, the crucial question is whether the corporation, in this transaction, was "purchasing" the 4,161 shares of its stock, within the meaning of that term as used in this part.

(c) Upon first examination, it might seem apparent that the transaction was a purchase by the corporation. From the viewpoint of the dealer the transaction was a sale, and ordinarily, at least a sale by one party connotes a purchase by the other. Furthermore, other indicia of a sale/purchase transaction were present, such as a transfer of property for a pecuniary consideration. However, when the underlying objectives of the margin regulations are considered, it appears that they do not encompass a transaction of this nature, where securities are transferred on credit to the issuer thereof for the purpose of retirement.

(d) Section 7(a) of the Securities Exchange Act of 1934 requires the Board of Governors to prescribe margin regulations "For the purpose of preventing the excessive use of credit for the purchase or carrying of securities." Accordingly, the provisions of this part are not intended to prevent the use of credit where the transaction will not have the effect of increasing the volume of credit in the securities markets.

(e) It appears that the instant transaction would have no such effect. When the transaction was completed, the equity interest of the dealer was transmuted into a dollar-obligation interest; in lieu of its status as a stockholder of the corporation, the dealer became a creditor of that corporation. The corporation did not become the owner of any securities acquired through the use of credit; its outstanding stock was simply reduced by 4,161 shares.

(f) The meaning of "sale" and "purchase" in the Securities Exchange Act has been considered by the Federal courts in a series of decisions dealing with corporate "insiders" profits under section 16(b) of that Act. Although the statutory purpose sought to be effectuated in those cases is quite different from the purpose of the margin regulations, the decisions in question support the propriety of not regarding a transaction as a "purchase" where this accords with the probable legislative intent, even though, literally, the statutory definition seems to include the particular transaction. See Roberts v. Eaton (CA 2 1954) 212 F. 2d 82, and cases and other authorities there cited. The governing principle, of course, is to effectuate the purpose embodied in the statutory or regulatory provision being interpreted, even where that purpose may conflict with the literal words. U.S. v. Amer. Trucking Ass'ns, 310 U.S. 534, 543 (1940); 2 Sutherland, Statutory Construction (3d ed. 1943) ch. 45.

(g) There can be little doubt that an extension of credit to a corporation to enable it to retire debt securities would not be for the purpose of "purchasing * * * securities" and therefore would come within § 220.4(f)(8), regardless of whether the retirement was obligatory (e.g., at maturity) or was a voluntary "call" by the issuer. This is true, it is difficult to see any valid distinction, for this purpose, between (1) voluntary retirement of an indebtedness security and (2) voluntary retirement of an equity security.

(h) For the reasons indicated above, it is the opinion of the Board of Governors that the extension of credit here involved is not of the kind which the margin requirements are intended to regulate and that the transaction described does not involve an unlawful extension of credit as far as this part is concerned.

(i) The foregoing interpretation relates, of course, only to cases of the type described. It should not be regarded as governing any other situations; for example, the interpretation does not deal with cases where securities are being transferred to someone other than the issuer, or to the issuer for a purpose other than immediate retirement. Whether the margin requirements are inapplicable to any such situations would depend upon the relevant facts of actual cases presented.

[27 FR 12346, Dec. 13, 1962]

§ 220.120 Loan value of securities used to make required deposit.

(a) The Board of Governors of the Federal Reserve System has received a number of inquiries resulting from the upward change in the level of margin requirements that became effective November 6, 1963, as to what loan value applies to securities used to make the deposit required by paragraph (b)(1) of § 220.3 with respect to transactions in general accounts which occur before an increase in margin requirements, if such deposit is made after the higher margin requirements become effective.

(b) In the case of such deposits, the loan value (on the occasion of that deposit only) is that which was in effect when the transaction in question was executed on the floor of the exchange. Thus, where the customer's order was executed before the recent increase from 50 percent of 70 percent margin became effective, he would still make his deposit at the lower margin, even though the securities used to satisfy the deposit requirement were not delivered to his broker until after the new margin requirements came into force.

[28 FR 12311, Nov. 21, 1963]

§ 220.121 Applicability of margin requirements to joint account between two creditors.

(a) The Board has recently been asked whether extensions of credit in a joint account between two brokerage firms, a member of a national securities exchange ("Firm X") and a member of the National Association of Securities Dealers ("Firm Y") are subject to the margin requirements of this part (Regulation T). It is understood that similar joint accounts are not uncommon, and it appears that the margin requirements of the regulation are not consistently applied to extensions of credit in the accounts.

(b) When the account in question was opened, Firm Y deposited $5,000 with Firm X and has made no further deposit in the account, except for the monthly settlement described below. Both firms have the privilege of buying and selling specified securities in the account, but it appears that Firm X initiates most of the transactions therein. Trading volume may run from half a million to a million dollars a month. Firm X carries the "official" ledger of the account and sends Firm Y a monthly statement with a complete record of all transactions effected during the month. Settlement is then made in accordance with the agreement between the two firms, which provides that profits and losses shall be shared equally on a fifty-fifty basis. However, all transactions are confirmed and reconfirmed between the two on a daily basis.

(c) Section 220.3(a) provides that

> All financial relations between a creditor and a customer, whether recorded in one record or in more than one record, shall be included in and be deemed to be part of the customer's general account with the creditor, * * *.

and § 220.2(c) defines the term "customer" to include

> * * * any person, or any group of persons acting jointly, * * * to or for whom a creditor is extending or maintaining any credit * * *

In the course of a normal month's operations, both Firm X and Firm Y are at one time or another extending credit to the joint account, since both make purchases for the account that are not "settled" until the month's end. Consequently, the account would be a "customer" within the above definition.

(d) Section 220.6(b) provides, with respect to the account of a joint adventure in which a creditor participates, that

> * * * the adjusted debit balance of the account shall include, in addition to the items specified in § 220.3(d), any amount by which the creditor's contribution to the joint adventure exceeds the contribution which he would have made if he had contributed merely in proportion to his right to share in the profits of the joint adventure.

In addition, the final paragraph of § 220.2(c) states that the definition of "customer"

> * * * includes any joint adventure in which a creditor participates and which would be considered a customer of the creditor if the creditor were not a participant.

(e) The above provisions clearly evince the Board's intent that the regulation shall cover trading accounts in which a creditor participates. If additional confirmation were needed, it is supplied by the fact that the Board found it needful specifically to exempt from ordinary margin requirements credit extended to certain joint accounts in which a creditor participates. These include the account in which transactions of odd-lot dealers may be financed under § 220.4(f) (4), and the specialist's account under § 220.4(g). Accordingly, the Board concluded that the joint account between Firm X and Firm Y is a "customer" within the meaning of the regulation, and that extensions of credit in the account are subject to margin requirements.

[31 FR 7169, May 17, 1966]

§ 220.122 "Deep in the money put and call options" as extensions of credit.

(a) The Board of Governors has been asked to determine whether the business of selling instruments described as "deep in the money put and call options" would involve an extension of credit for the purposes of the Board's regulations governing margin requirements for securities transactions. Most of such options would be of the "call" type, such as the following proposal that was presented to the Board for its consideration:

> If X stock is selling at $100 per share, the customer would pay about $3,250 for a contract to purchase 100 shares of X at $70 per share within a 30-day period. The contract would be guaranteed by an exchange member, as are standard "puts" and "calls". When the contract is made with the customer, the seller, who will also be the writer of the contract, will immediately purchase 100 shares of X at $100 per share through the guarantor member firm in a margin account. If the customer exercises the option, the shares will be delivered to him; if the option is not exercised, the writer will sell the shares in the margin account to close out the transaction. As a practical matter, it is anticipated that the customer will exercise the option in almost every case.

(b) An ordinary "put" is an option given to a person to sell to the writer of the put a specified amount of securities at a stated price within a certain time. A "call" is an option given to a person to buy from the writer a specified amount of securities at a stated price within a certain time. To be freely saleable, options must be indorsed, or guaranteed, by a member firm of the exchange on which the security is registered. The guarantor charges a fee for this service.

(c) The option embodied in the normal put or call is exercisable either at the market price of the security at the time the option is written, or some "points away" from the market. The price of a normal option is modest by comparison with the margin required to take a position. Writers of normal options are persons who are satisfied with the current price of a security, and are prepared to purchase or sell at that price, with the small profit provided by the fee. Moreover, since a large proportion of all options are never exercised, a person who customarily writes normal options can anticipate that the fee would be clear profit in many cases, and he will not be obligated to buy or sell the stock in question.

(d) The stock exchanges require that the writer of an option deposit and maintain in his margin account with the indorser 30 percent of the current market price in the case of a call (unless he has a long position in the stock) and 25 percent in the case of a put (unless he has a short position in the stock). Many indorsing firms in fact require larger deposits. Under § 220.3(a) of Regulation T, all financial relations between a broker and his customer must be included in the customer's general account, unless specifically eligible for one of the special accounts authorized by § 220.4. Accordingly, the writer, as a customer of the member firm, must make a deposit, which is included in his general account.

(e) In order to prevent the deposit from being available against other margin purchases, and in effect counted twice, § 220.3(d)(5) requires that in computing the customer's adjusted debit balance, there shall be included "the amount of any margin customarily required by the creditor in connection with his endorsement or guarantee of any put, call, or other option". No other margin deposit is required in connection with a normal put or call option under Regulation T.

(f) Turning to the "deep in the money" proposed option contract described above, the price paid by the buyer can be divided into (1) a deposit of 30 percent of the current market value of the stock, and (2) an additional fixed charge, or fee. To the extent that the price of the stock rose during the 30 ensuing days the proposed instrument would produce results similar to those in the case of an ordinary profitable call, and the contract right would be exercised. But even if the price fell, unlike the situation with a normal option, the buyer would still be virtually certain to exercise his right to purchase before it expired, in order to minimize his loss. The result would be that the buyer would not have a genuine choice whether or not to buy. Rather, the instrument would have made it possible for him, in effect, to purchase stock as of the time the contract was written by depositing 30 percent of the stock's current market price.

(g) It was suggested that the proposed contract is not unusual, since there are examples of ordinary options selling at up to 28 percent of current market value. However, such examples are of options running for 12 months, and reflect expectations of changes in the price of the stock over that period. The 30-day contracts discussed above are not comparable to such 12-month options, because instances of true expectations of price changes of this magnitude over a 30-day period would be exceedingly rare. And a contract that does not reflect such true expectations of price change, plus a reasonable fee for the services of the writer, is not an option in the accepted meaning of the term.

(h) Because of the virtual certainty that the contract right would be exercised under the proposal described above, the writer would buy the stock in a margin account with an indorsing firm immediately on writing the contract. The indorsing firm would extend credit in the amount of 20 percent of the current market price of the stock, the maximum permitted by the current § 220.8 (supplement to Regulation T). The writer would deposit the 30 percent supplied by the buyer, and furnish the remaining 50 percent out of his own working capital. His account with the indorsing firm would thus be appropriately margined.

(i) As to the buyer, however, the writer would function as a broker. In effect, he would purchase the stock for the account, or use, of the buyer, on what might be described as a deferred payment arrangement. Like an ordinary broker, the writer of the contract described above would put up funds to pay for the difference between the price of securities the customer wished to purchase and the customer's own contribution. His only risk would be that the price of the securities would decline in excess of the customer's contribution. True, he would be locked in, and could not liquidate the customer's collateral for 30 days even if the market price should fall in excess of 30 percent, but the risk of such a decline is extremely slight.

(j) Like any other broker who extends credit in a margin account, the writer who was in the business of writing and selling such a contract would be satisfied with a fixed predetermined amount of return on his venture, since he would realize only the fee charged. Unlike a writer of ordinary puts and calls, he would not receive a substantial part of his income from fees on unexercised contract rights. The similarity of his activities to those of a broker, and the dissimilarity to a writer of ordinary options, would be underscored by the fact that his fee would be a fixed predetermined amount of return similar to an interest charge, rather than a fee arrived at individually for each transaction according to the volatility of the stock and other individual considerations.

(k) The buyer's general account with the writer would in effect reflect a debit for the purchase price of the stock and, on the credit side, a deposit of cash in the amount of 30 percent of that price, plus an extension of credit for the remaining 70 percent, rather than the maximum permissible 20 percent.

(l) For the reasons stated above, the Board concluded that the proposed contracts would involve extensions of credit by the writer as broker in an amount exceeding that permitted by the current supplement to Regulation T. Accordingly, the writing of such contracts by a brokerage firm is presently prohibited by such regulation, and any brokerage firm that indorses such a contract would be arranging for credit in an amount greater than the firm itself could extend, a practice that is prohibited by § 220.7(a).

[35 FR 3280, Feb. 21, 1970]

§ 220.123 Partial delayed issue contracts covering nonconvertible bonds.

(a) During recent years, it has become customary for portions of new issues of nonconvertible bonds and preferred stocks to be sold subject to partial delayed issue contracts, which have customarily been referred to in the industry as "delayed delivery" contracts, and the Board of Governors has been asked for its views as to whether such transactions involve any violations of the Board's margin regulations.

(b) The practice of issuing a portion of a debt (or equivalent) security issue at a date subsequent to the main underwriting has arisen where market conditions made it difficult or impossible, in a number of instances, to place an entire issue simultaneously. In instances of this kind, institutional investors (e.g., insurance companies or pension funds) whose cash flow is such that they expect to have funds available some months in the future, have been willing to subscribe to a portion, to be issued to them at a future date. The issuer has been willing to agree to issue the securities in two or more stages because it did not immediately need the proceeds to be realized from the deferred portion, because it could not raise funds on better terms, or because it preferred to have a certain portion of the issue taken down by an investor of this type.

(c) In the case of such a delayed issue contract, the underwriter is authorized to solicit from institutional customers offers to purchase from the issuer, pursuant to contracts of the kind described above, and the agreement becomes binding at the underwriters' closing, subject to specified conditions. When securities are issued pursuant to the agreement, the purchase price includes accrued interest or dividends, and until they are issued to it, the purchaser does not, in the case of bonds, have rights under the trust indenture, or, in the case of preferred stocks, voting rights.

(d) Securities sold pursuant to such arrangements are high quality debt issues (or their equivalent). The purchasers buy with a view to investment and do not resell or otherwise dispose of the contract prior to its completion. Delayed issue arrangements are not acceptable to issuers unless a substantial portion of an issue, not less than 10 percent, is involved.

(e) Sections 3(a) (13) and (14) of the Securities Exchange Act of 1934 provide that an agreement to purchase is equivalent to a purchase, and an agreement to sell to a sale. The Board has hitherto expressed the view that credit is extended at the time when there is a firm agreement to extend such credit (1968 Federal Reserve Bulletin 328; 12 CFR 207.101; ¶ 6800 Published Interpretations of the Board of Governors). Accordingly, in instances of the kind described above, the issuer may be regarded as extending credit to the institutional purchaser at the time of the underwriters' closing, when the obligations of both become fixed.

(f) Section 220.7(a) of the Board's Regulation T (12 CFR 220.7(a)), with an exception not applicable here, forbids a creditor subject to that regulation to arrange for credit on terms on which the creditor could not itself extend the credit. Sections 220.4(c) (1) and (2) (12 CFR 220.4(c) (1) and (2)) provide that a creditor may not sell securities to a customer except in good faith reliance upon an agreement that the customer will promptly, and in no event in more than 7 full business days, make full cash payment for the securities. Since the underwriters in question are creditors subject to the regulation, unless some specific exception applies, they are forbidden to arrange for the credit described above. This result follows because payment is not made until more than 7 full business days have passed from the time the credit is extended.

(g) However, § 220.4(c)(3) provides that:

> If the security when so purchased is an unissued security, the period applicable to the transaction under subparagraph (2) of this paragraph shall be 7 days after the date on which the security is made available by the issuer for delivery to purchasers.

(h) In interpreting § 220.4(c)(3), the Board has stated that the purpose of the provision:

> * * * is to recognize the fact that, when an issue of securities is to be issued at some future fixed date, a security that is part of such issue can be purchased on a "when-issued" basis and that payment may reasonably be delayed until after such date of issue, subject to other basic conditions for transactions in a special cash account. (1962

Federal Reserve Bulletin 1427; 12 CFR 220.118; ¶ 5996, Published Interpretations of the Board of Governors.)

In that situation, the Board distinguished the case of mutual fund shares, which technically are not issued until the certificate can be delivered by the transfer agent. The Board held that mutual fund shares must be regarded as issued at the time of purchase because they are:

> * * * essentially available upon purchase to the same extent as outstanding securities. The mechanics of their issuance and of the delivery of certificates are not significantly different from the mechanics of transfer and delivery of certificates for shares of outstanding securities, and the issuance of mutual fund shares is not a future event in the sense that would warrant the extension of the time for payment beyond that afforded in the case of outstanding securities. (ibid.)

The issuance of debt securities subject to delayed issue contracts, by contrast with that of mutual fund shares, which are in a status of continual underwriting, is a specific single event taking place at a future date fixed by the issuer with a view to its need for funds and the availability of those funds under current market conditions.

(i) For the reasons stated above the Board concluded that the nonconvertible debt and preferred stock subject to delayed issue contracts of the kind described above should not be regarded as having been issued until delivered, pursuant to the agreement, to the institutional purchaser. This interpretation does not apply, of course, to fact situations different from that described in this section.

[Reg. T, 36 FR 2777, Feb. 10, 1971]

§ 220.124 Installment sale of tax-shelter programs as "arranging" for credit.

(a) The Board has been asked whether the sale by brokers and dealers of tax-shelter programs containing a provision that payment for the program may be made in installments would constitute "arranging" for credit in violation of this Part 220. For the purposes of this interpretation, the term "tax-shelter program" means a program which is required to be registered pursuant to section 5 of the Securities Act of 1933 (15 U.S.C. section 77e), in which tax benefits, such as the ability to deduct substantial amounts of depreciation or oil exploration expenses, are made available to a person investing in the program. The programs may take various legal forms and can relate to a variety of industries including, but not limited to, oil and gas exploration programs, real estate syndications (except real estate investment trusts), citrus grove developments and cattle programs.

(b) The most common type of tax-shelter program takes the form of a limited partnership. In the case of the programs under consideration, the investor would commit himself to purchase and the partnership would commit itself to sell the interests. The investor would be entitled to the benefits, and become subject to the risks of ownership at the time the contract is made, although the full purchase price is not then required to be paid. The balance of the purchase price after the downpayment usually is payable in installments which range from 1 to 10 years depending on the program. Thus, the partnership would be extending credit to the purchaser until the time when the latter's contractual obligation has been fulfilled and the final payment made.

(c) With an exception not applicable here, § 220.7(a) of Regulation T provides that:

> A creditor [broker or dealer] may arrange for the extension or maintenance of credit to or for any customer of such creditor by any person upon the same terms and conditions as those upon which the creditor, under the provisions of this part, may himself extend or maintain such credit to such customer, but only such terms and conditions * * *

(d) In the case of credit for the purpose of purchasing or carrying securities (purpose credit), § 220.8 of the regulation (the Supplement to Regulation T) does not permit any loan value to be given securities that are not registered on a national securities exchange, included on the Board's OTC Margin List, or exempted by statute from the regulation.

(e) The courts have consistently held investment programs such as those described above to be "securities" for purpose of both the Securities Act of 1933 and the Securities Exchange Act of 1934. The courts have also held that the two statutes are to be construed together. Tax-shelter programs, accordingly, are securities for purposes of Regulation T. They also are not registered on a national securities exchange, included on the Board's OTC Margin List, or exempted by statute from the regulation.

(f) Accordingly, the Board concludes that the sale by a broker/dealer of tax-shelter programs containing a provision that payment for the program may be made in installments would constitute "arranging" for the extension of credit to purchase or carry securities in violation of the prohibitions of §§ 220.7(a) and 220.8 of Regulation T.

[Reg. T, 37 FR 6568, Mar. 31, 1972]

§ 220.125 Extending, maintaining or arranging credit on mutual fund shares having portfolio of exempted securities.

(a) The Board of Governors has been asked whether a broker or dealer may extend, maintain, or arrange for credit in a special bond account subject to § 220.4 (i) on collateral consisting of shares of registered open-end investment companies whose portfolios are made up entirely or in part of exempted securities.

(b) The term "exempted securities" is defined in section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)) and generally includes federal, state, and municipal securities. Such securities are eligible as collateral for extensions of credit in § 220.4(i) and are entitled to good faith loan value in an account carried pursuant to that section, under § 220.8(b).

(c) This Part 220 (Regulation T) provides that brokers and dealers may not extend, maintain, or arrange for credit to purchase any securities unless the collateral for such credit consists of exempted securities or securities that are registered on a national securities exchange or appear on the Board's OTC Margin List. Shares in registered open-end investment companies are not "exempted" securities, irrespective of the composition of the portfolio of the company, nor are they registered on national securities exchanges, or in-
cluded on the OTC Margin List.
cordingly, such shares do not h
loan value for purposes of this P
220, nor may brokers or dealers ext
credit against such shares to purch
or carry any securities under § 220.4

(d) The above-stated opinion is
conformity with the Board's views
pressed previously in its interpre
tions announced in 1952 Bulletin 1
(§ 220.109) and 1955 Bulletin
(§ 220.112) to the effect that brok
or dealers are prohibited from arra
ing credit to purchase unlisted sha
issued by open-end investment com
nies.

[Reg. T, 37 FR 6831, Apr. 5, 1972]

§ 220.126 Put and call options.

(a) The Board has been asked se
al questions about the treatment
put and call options and combinat
thereof (puts and calls) under Reg
tion T (Part 220). These questions
volve § 220.3(d) Adjusted debit
ance, § 220.3(h) Unissued securi
§ 220.4(c) Special cash account
§ 220.4(d) Special arbitrage account

(b) The special cash account un
§ 220.4(c) may be used only for th
bona fide transactions in securitie
which the creditor accepts in g
faith the customer's agreement, i
is a purchaser, that (if he does no
ready have sufficient funds in the
count) he will promptly make full
payment for the security and does
contemplate selling it prior to ma
such payment, and if he is a se
that he or his principal owns the s
rity and (if it is not already held in
account) it will be promptly depos
therein. It is the Board's view
subject to these requirements, a c
tor may effect in a special cash
count (1) the purchase or sale for
of a put or call; (2) the exercise
call, provided that full cash payn
for the purchased stock is deposite
the account promptly and in any e
prior to the release of the procee
any resale of such security; and (3
endorsement, guarantee or issuan
a put or call if (in the case of a
sufficient funds to purchase the
derlying stock or (in the case of a
the underlying stock itself are he
the account.

(c) Generally a put or call option refers to an agreement to sell a security or to purchase a security, at some future time. Although the agreement may itself be deemed to be a security, it cannot be an "unissued" security, under § 220.3(h) or § 220.4(c)(3), for the reasons set forth by the Board in discussing a similar question in regard to mutual fund shares (1962 Bulletin 1427; 12 CFR 220.118). Accordingly, in respect of a transaction involving puts or calls, payment is required within the period of time provided by § 220.3(b)(1) if the transaction occurs in the general account (or if the transaction occurs in a special cash account, by § 220.4(c)(2)) without regard to whether there has been a delay in obtaining the endorsement, or for any other reason the option has not yet technically been issued.

(d) A question has been asked whether puts and calls may be considered to be securities which are exchangeable or convertible into other securities within 90 calendar days, without restriction other than the payment of money. If held in a general account, such exchangeable or convertible securities are acceptable in lieu of the margin required in respect of a short sale under § 220.3(d)(3). If held in a special arbitrage account under § 220.4 (d), exchangeable or convertible securities will support the sale, for purposes of bona fide arbitrage, of the security into which they are so exchangeable or convertible. The Board concludes that puts and calls may not be considered, for either purpose, as securities that are exchangeable or convertible into other securities. The Board's view stems from the policies underlying the sections in question.

(e) The margin restrictions in respect of short sales were imposed in order that:

> * * * traders on the short side of the market should not be in a position, with a given amount of funds, to exert a greater influence on the market than they could with the same amount of funds if they were trading on the long side. (Annual Report, Board of Governors, 1937, p. 208.)

Permitting call options to be used in lieu of the margin required in respect of a short sale would be inconsistent with that general policy (parallel considerations would apply in the case of puts).

(f) The use of the special arbitrage account under § 220.4(d) is limited to the simultaneous purchase and sale of the same or equivalent securities for the purpose of taking advantage of a difference in price. Arbitrage is permitted to be carried on without additional deposit of margin because it tends to equalize prices between markets and between equivalent securities. Because the relatively high initial cost of a put or call option must be deducted from the potential profit due to the disparity in price between the two securities, it is not likely that true arbitrage would take place between an option and an underlying security. Such options would be used, rather, for purposes of "hedging," that is to say, to protect an investor against loss while he holds a security in the hope of profiting by changes in its price. Such market strategies may be beneficial to individual investors. However, they do not perform a comparable market function.

(g) Section 221.2 of this chapter provides that "a bank may extend and may maintain any credit for the purpose specified in § 221.1, without regard to the limitations prescribed therein, or in § 221.3(t), if the credit comes within any of the following descriptions." Paragraph (j) contains the following description: "Any credit extended to a member of a national securities exchange for the purpose of financing his or his customers' bona fide arbitrage transactions in securities." The Board has concluded that a purchase of a put or call is not embraced within the term in § 220.4(d) "a purchase of a security which is, without restriction other than the payment of money exchangeable or convertible * * * into a second security" so as to qualify such purchase, when effected together with an offsetting sale of the second security, as a bona fide arbitrage transaction, and the Board's conclusion is also applicable to paragraph (j) of § 221.2.

[Reg. T, 38 FR 5237, Feb. 27, 1973]

§ 220.127 Independent broker/dealers arranging credit in connection with the sale of insurance premium funding programs.

(a) The Board's September 5, 1972, clarifying amendment to § 220.4(k) set forth that creditors who arrange credit for the acquisition of mutual fund shares and insurance are also permitted to sell mutual fund shares without insurance under the provisions of the special cash account. It should be understood, of course, that such account provides a relatively short credit period of up to 7 business days even with so-called cash transactions. This amendment was in accordance with the Board's understanding in 1969, when the insurance premium funding provisions were adopted in § 220.4(k), that firms engaged in a general securities business would not also be engaged in the sale and arranging of credit in connection with such insurance premium funding programs.

(b) The 1972 amendment eliminated from § 220.4(k) the requirement that, to be eligible for the provisions of the section, a creditor had to be the issuer, or a subsidiary or affiliate of the issuer, of programs which combine the acquisition of both mutual fund shares and insurance. Thus the amendment permits an independent broker/dealer to sell such a program and to arrange for financing in that connection. In reaching such decision, the Board again relied upon the earlier understanding that independent broker/dealers who would sell such programs would not be engaged in transacting a general securities business.

(c) In response to a specific view recently expressed, the Board agrees that under Regulation T:

> * * * a broker/dealer dealing in special insurance premium funding products can only extend credit in connection with such products or in connection with the sale of shares of registered investment companies under the cash accounts * * * (and) cannot engage in the general securities business or sell any securities other than shares * * * (in) registered investment companies through a cash account or any other manner involving the extension of credit.

(d) There is a way, of course, as has been indicated, that an independent broker/dealer might be able to sell other than shares of registered investment companies without creating any conflict with the regulation. Such sales could be executed on a "funds on hand" basis and in the case of payment by check, would have to include the collection of such check. It is understood from industry sources, however, that few if any independent broker/dealers engage solely in a "fund on hand" type of operation.

[Reg. T, 38 FR 11066, May 4, 1973]

§ 220.128 Treatment of simultaneous long and short positions in the same margin account when put or call options or combinations thereof on such stock are also outstanding in the account.

(a) The Board was recently asked whether under Regulation T, "Credit by Brokers and Dealers" (12 CFR Part 220), if there are simultaneous long and short positions in the same security in the same margin account (often referred to as a short sale "against the box"), such positions may be used to supply the place of the deposit of margin ordinarily required in connection with the guarantee by a creditor of a put or call option or combination thereof on such stock.

(b) The applicable provisions of regulation T are § 220.3(d)(3) and (5) and § 220.3(g)(4) and (5) which provide as follows:

> (d) * * * the adjusted debit balance of a general account * * * shall be calculated by taking the sum of the following items:
>
> * * * * *
>
> (3) The current market value of any securities (other than unissued securities) sold short in the general account plus, for each security (other than an exempted security), such amount as the board shall prescribe from time to time in § 220.8(d) (the supplement to regulation T) as the margin required for such short sales, except that such amount so prescribed in such § 220.8(d) need not be included when there are held in the general account * * * the same securities or securities exchangeable or convertible within 90 calendar days, without restriction other than the payment of money, into such securities sold short;
>
> * * * * *

> (5) The amount of any margin customarily required by the creditor in connection with his endorsement or guarantee of any put, call, or other option;
>
> * * * * *
>
> (g) * * * (4) Any transaction which serves to meet the requirements of paragraph (e) of this section or otherwise serves to permit any offsetting transaction in an account shall, to that extent, be unavailable to permit any other transaction in such account.
>
> (5) For the purposes of this part (regulation T), if a security has maximum loan value under paragraph (c)(1) of this section in a general account, or under § 220.4(j) in a special convertible debt security account, a sale of the same security (even though not the same certificate) in such account shall be deemed to be a long sale and shall not be deemed to be or treated as a short sale.

(c) Rule 431 of the New York Stock Exchange requires that a creditor obtain a minimum deposit of 25 percent of the current market value of the optioned stock in connection with his issuance or guarantee of a put, and at least 30 percent in the case of a call (and that such position be "marked to the market"), but permits a short position in the stock to serve in lieu of the required deposit in the case of a put and a long position to serve in the case of a call. Thus, where the appropriate position is held in an account, that position may serve as the margin required by § 220.3(d)(5).

(d) In a short sale "against the box," however, the customer is both long and short the same security. He may have established either position, properly margined, prior to taking the other, or he may have deposited fully paid securities in his margin account on the same day he makes a short sale of such securities. In either case, he will have directed his broker to borrow securities elsewhere in order to make delivery on the short sale rather than using his long position for this purpose (see also 17 CFR 240.3b-3).

(e) Generally speaking, a customer makes a short sale "against the box" for tax reasons. Regulation T, however, provides in § 220.3(g) that the two positions must be "netted out" for the purposes of the calculations required by the regulation. Thus, the board concludes that neither position would be available to serve as the deposit of margin required in connection with the endorsement by the creditor of an option.

(f) A similar conclusion obtains under § 220.3(d)(3). That section provides, in essence, that the margin otherwise required in connection with a short sale need not be included in the account if the customer has in the account a long position in the same security. In § 220.3(g) (4), however, it is provided that "[A]ny transaction which * * * serves to permit any offsetting transaction in an account shall, to that extent, be unavailable to permit any other transaction in such account." Thus, if a customer has, for example, a long position in a security and that long position has been used to supply the margin required in connection with a short sale of the same security, then the long position is unavailable to serve as the margin required in connection with the creditor's endorsement of a call option on such security.

(g) A situation was also described in which a customer has purported to establish simultaneous offsetting long and short positions by executing a "cross" or wash sale of the security on the same day. In this situation, no change in the beneficial ownership of stock has taken place. Since there is no actual "*contra*" party to either transaction, and no stock has been borrowed or delivered to accomplish the short sale, such fictitious positions would have no value for purposes of the Board's margin regulations. Indeed, the adoption of such a scheme in connection with an overall strategy involving the issuance, endorsement, or guarantee of put or call options or combinations thereof appears to be manipulative and may have been employed for the purpose of circumventing the requirements of the regulations.

[Reg. T, 38 FR 12098, May 9, 1973]

§ 220.129 Applicability of same-day substitution rule to accounts subject to section 220.8(g).

(a) The Board has been asked numerous questions regarding the use of the same-day substitution privilege in

§ 220.3(b) of Regulation T in connection with accounts subject to § 220.8(g), generally, accounts having less than 40 percent equity. Prior to the Board's amendments, effective September 18, 1972 (37 FR 13972, 3, 4, July 15, 1972), a customer whose account was undermargined to any extent was allowed to substitute one security for another on the same day, usually through a sale and purchase for like amounts, without being required to improve his equity in the account. The 1972 amendments limit this privilege to accounts with an equity of 40 percent or more; as presently set by the Board. Accordingly, if a customer's equity is below 40 percent, he is not eligible for the same-day substitution privilege, but is required to put up margin on any new commitment, and retention requirements are applied to any liquidation, even though the transactions are effected on the same day.

(b) The questions raised with the Board touch upon other provisions of Regulation T as well that are affected by the September 1972 amendment to the same-day substitution rule and the impact of the amendment on these provisions is also reflected in the examples stated below. In making computations in similar situations it should be borne in mind that the examples are based on a current loan value of 35 percent for margin securities (margin requirements of 65 percent), and 50 percent loan value for exchange-listed convertible bonds, while the retention requirement for all accounts is 70 percent (release 30 percent).

QUESTIONS AND ANSWERS ON THE SAME-DAY SUBSTITUTION RULE IN CONNECTION WITH ACCOUNTS SUBJECT TO § 220.8(g)

Based on margin requirements as of November 24, 1972 of 65 percent (35 percent loan value) in the general account and 50 percent (50 percent loan value) in the special convertible debt security account, and retention requirements with respect to withdrawals in each account of 70 percent (30 percent release).

June 1973

1. Q. Customer is long $10,000 margin securities in his general account, which has an adjusted debit balance of $7,000. Customer has an $8,000 balance in his special miscellaneous account. The general account is subject to section 8(g). The customer wishes to purchase margin securities worth $1,000 and sell securities worth $1,000 on the same day. What is the Regulation T margin call if any?

A. $350, the margin required on the purchase ($650) minus the margin released on the sale ($300) (net $350). The call may be met by a debit to the customer's special miscellaneous account.

2. Q. Customer is long $10,000 margin securities in his general account which has an adjusted debit balance of $9,000. Customer has an $8,000 balance in his special miscellaneous account. The general account is subject to section 8(g). May the creditor reduce the special miscellaneous account balance to a level at which time the general account would no longer be subject to section 8(g)?

A. Yes; before such a debit to the special miscellaneous account is made, however, the creditor may wish to obtain the written consent of the customer. The customer should be fully aware of the procedure to be followed by the creditor and that such an amount could not be transferred back from the general account to the special miscellaneous account at a later date, unless an excess over 65 percent margin in the general account would permit another transfer.

3. Q. Customer's account has a Regulation T margin call which was outstanding (and not overdue) as of the close of business on the preceding business day. In computing the account to determine if it is subject to section 8(g), may the creditor consider the outstanding Regulation T margin call as collected?

A. Yes, for the purpose of computing an account to determine whether it is subject to section 8(g), the creditor may give credit to such an outstanding Regulation T margin call which would reduce the adjusted debit balance.

4. Q. Customer is long $10,000 margin securities in his general account which has an adjusted debit balance of $6,075. The account is subject to section 8(g) by an amount less than $100. He wishes to purchase margin securities valued at $1,000 and sell securities valued at $1,000 in the account on the same day. What Regulation T margin call if any should be issued?

A. $350. Once the determination has been made that an account is subject to section 8(g), purchases in the general account are charged the margin required, currently 65 percent, and sales currently release 30 percent. The $100 rule in § 220.3(g)(3) does not apply to the 8(g) computation.

5. Q. Customer's account has an outstanding maintenance margin call. In computing the account to determine if it is subject to section 8(g), may the creditor consider the

outstanding maintenance margin call as collected?

A. No; maintenance margin calls are generally credited to the customer's special miscellaneous account, and accordingly, the collection of the maintenance margin call would not change the adjusted debit balance.

6. Q. Customer is long $10,000 margin securities in his general account which is subject to section 8(g) by $100 and is in a so-called regular restricted status by $2,600. He wishes to sell securities worth $9,000 and buy margin securities worth $9,000 on the same day. The purchase would require margin of $5,850 and the sale would release $2,700 (net $3,150). In what amount should the creditor issue a Regulation T margin call?

A. $2,600. The customer would not be required to deposit more than is needed to eliminate the so-called regular restriction.

7. Q. Does a debit to the general account and a credit to the special miscellaneous account (SMA) increase the customer's adjusted debit balance?

A. Yes; the reference to "net debit balance" in § 220.3(d)(1) of Regulation T, in connection with the adjusted debit balance computation, includes any amounts debited to the general account and credited to the SMA. It is quite possible for an account to be subject to section 8(g) as a result of such entries. For regulatory purposes, the balances of the two accounts should be separately stated, whether the creditor maintains the SMA by journal or memorandum entry methods.

Section 220.4(a) provides that a creditor may establish an SMA, the purpose of which is defined in paragraph (f)(6), provided it is recorded separately, and confined to its intended purpose, with an adequate record maintained. Paragraph (a)(3) further provides that:

> * * * If a customer has with a creditor both a general account and one or more such special accounts, the creditor shall treat each such special account as if the customer had with the creditor no general account * * *

The agreement between the creditor and the customer should clearly show that two accounts will be maintained and that when transfers of amounts such as dividends, maintenance margin calls, and excess are made, the general account and the SMA are debited or credited as the case may be. Funds cannot be freely transferred back and forth. Generally, while funds can always be transferred from the SMA to the general account, transfers from the general account to the SMA can only be made when certain specific events occur and conditions are met.

8. Q. Customer is long $80,000 convertible debt securities in a special convertible debt security account which has an adjusted debit balance of $50,000. The account is subject to section 8(g). The customer wishes to purchase $60,000 convertible debt securities (which are marginable) and sell $60,000 convertible debt securities on the same day. What is the Regulation T margin call if any?

A. $10,000. The margin currently required on the purchase is $30,000 and the margin currently released on the sale is $18,000. However, the customer would not be required to deposit more than is needed to eliminate the so-called regular restriction of $10,000 in the account.

9. Q. Does the 8(g) rule apply to the special bond account?

A. No; in a special bond account, the maximum loan value of collateral held in the account is determined by the creditor in good faith, and the retention requirement which applies to withdrawal of such collateral is equal to the good faith loan value applied by the creditor.

10. Q. Customer has an account subject to 8(g) and wishes to know how much he can buy or sell without incurring a Regulation T margin call.

A. (1) Under the current 65 percent margin requirement (in the general account),

(a) To determine how much a customer can buy with the proceeds of a sale in that account, apply this formula:

(30% (margin released on sale)/65% (margin required on purchase)=46.1% (round off 46%)

Thus, a sale of $10,000 would permit a purchase of $4,600.

Proof:

Margin released on sale of $10,000	$3,000
Margin required on purchase of $4,600	2,990

(b) To determine how much a customer would have to sell to meet the margin requirement on a purchase, apply this formula:

(65% (margin required on purchase)/30% (margin released on sale)=216⅔% (round off 217%)

Thus, a purchase of $10,000 would require a sale of $21,667.

Proof:

Margin required on purchase of $10,000	$6,500
Margin released on sale of $21,667	6,500

(2) Under the current 50 percent margin requirement (in the special convertible debt security account),

(a) To determine how much a customer can buy with the proceeds of a sale in that account, apply this formula:

30% (margin released on sale)/50% (margin required on purchase)=60%

Thus, a sale of $10,000 would permit a purchase of $6,000.

Proof:

Margin released on sale of $10,000	$3,000
Margin required on purchase of $6,000	3,000

(b) To determine how much a customer would have to sell to meet the margin requirement on a purchase, apply this formula:

50% (margin required on purchase)/30% (margin released on sale)=166⅔% (round off 167%)

Thus, a purchase of $10,000 would require a sale of $16,700.

Proof:

Margin required on purchase of $10,000	$5,000
Margin released on sale of $16,700	5,010

11. Q. A Regulation T margin call is issued as a result of a same-day substitution occurring in an account that is subject to section 8(g). What computation is required?

A. The amount may be determined by applying this formula:

Less:
Margin required on commitment
Margin released on liquidation
Equals: Regulation T margin call

ILLUSTRATIONS

1. In a general account:	
a. Purchase $10,000×65% margin required	$6,500
Sell $9,000×30% margin released	2,700
Regulation T margin call	3,800
b. Purchase $8,000×65% margin required	5,200
Sell $11,000×30% margin released	3,300
Regulation T margin call	1,900
2. In a special convertible debt security account:	
a. Purchase $6,000×50% margin required	3,000
Sell $5,000×30% margin released	1,500
Regulation T margin call	1,500
b. Purchase $7,000×50% margin required	3,500
Sell $9,000×30% margin released	2,700
Regulation T margin call	800

12. Q. Customer's general account which is subject to section 8(g) includes a short position in stock A of 100 shares at 100 (market value $10,000). Customer buys 200 shares of the same stock and maintains his short position, which results in a long position of 200 shares of which 100 shares is considered the long side of the short sale "against the box." Does this transaction result in the issuance of a Regulation T margin call and for how much?

A. Yes; the customer would incur a Regulation T margin call of $6,500, the margin required on the new net commitment of 100 shares long. Because the customer's account is subject to section 8(g), the retention requirement provision in the regulation (which does not provide for any release on the covering of a short position) would apply.

13. Q. Customer's general account is subject to section 8(g) and he wishes to buy and sell the same stock on the same day (day trade). May he do so without furnishing additional margin under Regulation T? (This question assumes that the customer could effect such a day trade in conformance with exchange requirements.)

A. No; Regulation T in providing for transactions on a given day in § 220.3(g) does not distinguish between same or different securities. Therefore, the amount of deposit required would be computed on the basis of the margin required on the purchase less the amount released on the sale of the same stock.

14. Q. May the amount deposited to meet a Regulation T margin call in an account subject to section 8(g) be credited to the customer's special miscellaneous account?

A. No; any Regulation T margin call must be credited directly to the account with respect to which the call was issued and may not be transferred to the customer's special miscellaneous account.

15. Q. Customer's general account is subject to section 8(g). He effects a same-day substitution by liquidating securities worth $21,334, thereby releasing 30 percent ($6,400), and purchasing margin securities worth $10,000, thereby requiring margin of 65 percent ($6,500). Must the customer deposit the $100 difference?

A. No; the creditor may waive a Regulation T margin call of $100 or less.

16. Q. Customer's special convertible debt security account is subject to section 8(g). His general account is in a so-called restricted status but not subject to section 8(g). May he effect a same-day substitution of securities in like amounts in his general account without incurring a Regulation T margin call?

A. Yes. Each account is computed separately, either one of which may or may not be subject to section 8(g).

17. Q. Customer's general account is subject to section 8(g) and he has a $200 balance in his special miscellaneous account. May he withdraw the $200?

A. Yes; Regulation T would not prevent such a withdrawal. However, exchange and creditor requirements should be considered.

18. Q. A customer's general account is priced as of the previous night's close of business and is subject to section 8(g) by $300. On the current day, may the customer deposit $300 directly into his general account and subsequently effect a same-day substitution of margin securities without incurring a Regulation T margin call?

A. No; when an account is subject to section 8(g), a deposit on the current day of the amount by which the account is subject to section 8(g) would not eliminate the section 8(g) restriction. Accordingly, a Regulation T margin call should be issued in the appropriate amount if there is effected in the account a same-day substitution of margin securities.

19. Q. Customer is long a profitable call option on 100 shares of margin stock A at 50 in his general account which is subject to section 8(g). He wishes to exercise the option and hold the stock which is currently at 55. What is the Regulation T margin call if any?

A. $3,250, the margin required on the purchase of $5,000. In pricing the account subsequent to the purchase, loan value would be applied to the stock's current market value of $5,500.

20. Q. Customer is long a profitable call option on 100 shares of margin stock B at 50 in his general account which is subject to section 8(g). He wishes to exercise the option by buying stock B at 50 and selling stock B at 55 on the same day. What is the Regulation T margin call if any?

A. $1,600, the margin required on the purchase ($3,250) minus the margin released on the sale ($1,650).

21. Q. Is it possible under Regulation T for a customer who is long a profitable option in his general account which is subject to section 8(g) to terminate his position in the option and have immediate access to the funds representing the profit?

A. Yes; he may give instructions to his broker to transfer the option from his general account to his special cash account where he could sell the option itself either back to the broker or to others.

22. Q. A customer's general account is subject to section 8(g). May he transfer a profitable call option from his general account to his special cash account where he would exercise it?

A. Yes; provided that full cash payment for the purchased stock is available in the special cash account or is deposited promptly. Such payment must be deposited in the special cash account prior to the release of the proceeds of the resale of the security, if the customer wishes to liquidate the position in the security acquired upon exercise.

23. Q. Customer is short an uncovered call option on 100 shares of stock C with a striking price of 50 in his general account which is subject to section 8(g). His net debit balance was reduced by $1,500 (30 percent margin requirement) when the short option position was taken (made up by receipt of $500 premium and additional deposit of $1,000, both credited to the general account). Presently, the market value of stock C is up to 60 and customer's adjusted debit balance now includes $2,800 ($6,000×30 percent=$1,800 plus the mark to the market loss of $1,000). The call is exercised against him at 60 and customer purchases the stock and delivers it the same day. What is the Regulation T margin call, if any?

A. $2,400, the margin required on the purchase of stock C ($3,900) minus the margin released on the sale of stock C ($1,500). When an account is subject to section 8(g), the retention requirement provisions in the regulation do not provide for any release of any portion of the amount included in the adjusted debit balance computation in connection with the option prior to its exercise. The account, of course, may subsequently be refigured for any Regulation T excess.

24. Q. Customer's account is the same as in question 23. However, when the call is exercised against him at 60, customer borrows the stock for delivery (without buying in), thereby establishing a short position in stock C. What is the Regulation T margin call if any?

A. $3,250, the margin required on the newly established short position in stock C. Here, too, because the account is subject to section 8(g), the regulation would not permit the broker to offset the Regulation T margin call by any portion of the amount previously included in the adjusted debit balance computation in connection with the outstanding option prior to its exercise. It should be further noted that subsequent to the exercise and during the time the customer maintains the short position in stock C, the adjusted debit balance computation for the short position would be based on the current market value of the security.

25. Q. Customer's account is the same as in question 23. However, when the call is exercised, the customer assumes a short position of 100 shares in stock C. Later in the day the customer covers his short position by purchasing on the open market 100 shares of stock C at 60. What is the Regulation T margin call, if any?

A. $2,400, the margin required on the purchase of stock C ($3,900) minus the margin released on the sale of stock C ($1,500).

26. Q. Customer is short an uncovered call option on 100 shares of stock D with a striking price of 50 in his general account which is subject to section 8(g). His net debit balance was reduced by $1,500 (30 percent

margin requirement) when the short option position was taken. Presently, the market value of stock D is down to 40 and customer's adjusted debit balance now includes $200 ($4,000×30 percent=$1,200 minus the mark to the market gain of $1,000). The holder of the option allows it to expire. May the customer who is short the option withdraw any portion of the amount included as margin in the adjusted debit balance computation in connection with the option or use the amount against another transaction?

A. No. When an account is subject to section 8(g), the retention requirement provisions in the Regulation do not provide for any release of any portion of the amount included as margin in the adjusted debit balance computation in connection with the option.

[Reg. T, 38 FR 16652, June 25, 1973]

§ 220.130 Escrow receipts for option transactions.

(a) The Board has been asked whether or not it is permissible under the provisions of § 220.4(c) of Regulation T (12 CFR 220.4(3)) relating to the special cash account, to allow customers to write put and call securities options which are "covered" by the escrow receipt of a bank when the escrow receipt, because of the mechanics of the trade, cannot be delivered to the broker on the day the option is written. When exchange-traded securities options were first introduced in 1973 the Board expressed the view that certain option transactions were permitted in the cash account (1973 Bulletin 525; 12 CFR 220.126) under circumstances which indicated their nature as bona fide cash transactions. Basically, that interpretation indicates that the special cash account can be used if the underlying securities, or the funds necessary to pay for the securities, are held in the account on the day the option is written. (This is commonly referred to as a "covered" transaction.) The use of "escrow receipts" for option transactions to be effected in a special cash account was not considered by the Board at the time of the 1973 interpretation.

(b) An escrow receipt is an agreement under which a bank represents and warrants that it holds for the account of a customer the securities which are the subject of a call, or the cash to purchase the securities which are the subject of a put, and will continue to hold the same until the option is either exercised or expires. If the option is exercised, the bank will deliver or accept delivery of the appropriate securities against payment, as the circumstances require.

(c) It has been represented to the Board that customers who wish to write covered options in a cash account using escrow receipts are hampered because of procedural delays in transmitting the escrow receipt from the bank to the broker. Up to three business days may elapse before the receipt can be in the physical possession of the broker because, for example, some banks will not issue the receipt until the premium for writing the option is delivered.

(d) The Board is of the view that a broker may effect an option transaction in a special cash account where the customer represents that the required securities or cash are then held for that customer at a bank and the broker independently verifies that the appropriate escrow receipt will be delivered to the broker by the bank as soon as possible but, in no event, later than three business days after the option is written. (The term "bank" as defined in section 3(a)(6) of the Securities Exchange Act of 1934 includes banks, trust companies and those branches of foreign banks which are located in the United States and are supervised and examined by State banking authorities.) Any delay in delivery of the escrow receipt resulting from factors within the customer's control would, of course, cast doubt on the eligibility of the transaction as a *bona fide* cash transaction.

[41 FR 34938, Aug. 18, 1976]

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCK

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221.123 Bona fide arbitrage transactions.

AUTHORITY: Secs. 3, 7, 8 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h and 78w).

SOURCE: Regulation U, §§ 221.1 through 221.8 appear at 48 FR 35076, Aug. 3, 1983, unless otherwise noted.

EDITORIAL NOTE 1: A copy of each form referred to in this part is filed as a part of the original document. Copies are available upon request to the Board of Governors of the Federal Reserve System or any Federal Reserve Bank.

EDITORIAL NOTE 2: For FR citations to changes to the List of OTC Margin Stocks, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 221.1 Authority, purpose, and scope.

(a) *Authority.* Regulation U ("this part") is issued by the Board of Governors of the Federal Reserve System ("the Board") pursuant to the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. 78a *et seq.*).

(b) *Purpose and scope.* This part imposes credit restrictions upon "banks" (as defined in § 221.2(b) of this part) that extend credit for the purpose of buying or carrying margin stock if the credit is secured directly or indirectly by margin stock. Banks may not extend more than the maximum loan value of the collateral securing such credit, as set by the Board in § 221.8 (the Supplement).

[Reg. U, 48 FR 35076, Aug. 3, 1983; 48 FR 37361, Aug. 18, 1983]

§ 221.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section.

(a) "Affiliate" means: (1) Any bank holding company of which a bank is a subsidiary within the meaning of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(d));

(2) Any other subsidiary of such bank holding company; and

(3) Any other corporation, business trust, association, or other similar organization that is an affiliate as defined in section 2(b) of the Banking Act of 1933 (12 U.S.C. 221a(c)).

(b)(1) "Bank" has the meaning given to it in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)) and includes: (i) Any subsidiary of a bank;

(ii) Any corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611); and

(iii) Any agency or branch of a foreign bank located within the United States.

(2) "Bank" does not include: (i) Any savings and loan association,

(ii) Any credit union,

(iii) Any lending institution that is an instrumentality or agency of the United States, or

(iv) Any member of a national securities exchange.

(c) "Carrying" credit is credit that enables a customer to maintain, reduce, or retire indebtedness originally incurred to purchase a security that is currently a margin stock.

(d) "Current market value" of (1) a security means: (i) If quotations are available, the closing sale price of the security on the preceding business day, as appearing on any regularly published reporting or quotation service; or

(ii) If there is no closing sale price, the bank may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day; or

(iii) If the credit is used to finance the purchase of the security, the total cost of purchase, which may include any commissions charged.

(2) Any other collateral means a value determined by any reasonable method in accordance with sound banking practices.

(e) "Customer" includes any person or persons acting jointly, to or for whom a bank extends or maintains credit.

(f) "Good faith" with respect to: (1) The loan value of collateral, means that amount (not exceeding 100 per cent of the current market value of the collateral) which a bank, exercising sound banking judgment, would lend, without regard to the customer's other assets held as collateral in connection with unrelated transactions.

(2) Accepting notice or certification from or on behalf of a customer means that the bank or its duly authorized representative is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to accept the notice or certification without inquiry, investigates and is satisfied that it is truthful;

(g) "Indirectly secured" (1) Includes any arrangement with the customer under which:

(i) The customer's right or ability to sell, pledge, or otherwise dispose of margin stock owned by the customer is in any way restricted while the credit remains outstanding; or

(ii) The exercise of such right is or may be caused for accelerating the maturity of the credit.

(2) Does not include such an arrangement if:

(i) After applying the proceeds of the credit, not more than 25 percent of the value (as determined by any reasonable method) of the assets subject to the arrangement is represented by margin stock;

(ii) It is a lending arrangement that permits accelerating the maturity of the credit as a result of a default or renegotiation of another credit to the customer by another lender that is not an affiliate of the bank;

(iii) The bank holds the margin stock only in the capacity of custodian, depositary, or trustee, or under similar circumstances, and, in good faith, has not relied upon the margin stock as collateral; or

(iv) The bank, in good faith, has not relied upon the margin stock as collateral in extending or maintaining the particular credit.

(h) "Margin stock" means: (1) Any equity security registered or having unlisted trading privileges on a national securities exchange;

(2) any OTC margin stock;

(3) any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);

(4) any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock;

(5) any warrant or right to subscribe to or purchase a margin stock; or

(6) any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), other than:

(i) A company licensed under the Small Business Investment Company Act of 1958, as amended (15 U.S.C. 661); or

(ii) a company which has at least 95 percent of its assets continuously invested in exempted securities (as defined in 15 U.S.C. 78c(a)(12)); or

(iii) a company which issues face-amount certificates as defined in 15 U.S.C. 80a-2(a)(15), but only with respect of such securities.

(i) "Maximum loan value" is the percentage of current market value assigned by the Board under § 221.8 of this part to specified types of collateral. The maximum loan value of margin stock is stated as a percentage of its current market value. Puts, calls and combinations thereof have no loan value except for purposes of § 221.5(c)(10) of this part. All other collateral has "good faith" loan value.

(j) "OTC margin stock" is any equity security not traded on a national securities exchange that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an "OTC margin stock" unless it appears on the Board's periodically published list of OTC margin stocks.

(k) "Purpose credit" is any credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying margin stock.

[Reg. U, 48 FR 35076, Aug. 3, 1983, as amended at 50 FR 10934, Mar. 19, 1985]

§ 221.3 General requirements.

(a) *Extending, maintaining, and arranging credit*—(1) *Extending credit.* No bank shall extend any purpose credit, secured directly or indirectly by margin stock, in an amount that exceeds the maximum loan value of the collateral securing the credit. The maximum loan value of margin stock (set forth in § 221.8 of this part) is assigned by the Board in terms of a percentage of the current market value of the margin stock. All other collateral has "good faith" loan value, as defined in § 221.2(f) of this part.

(2) *Maintaining credit.* A bank may continue to maintain any credit initially extended in compliance with this part, regardless of:

(i) Reduction in the customer's equity resulting from change in market prices;

(ii) Change in the maximum loan value prescribed by this part; or

(iii) Change in the status of the security (from nonmargin to margin) securing an existing purpose credit.

(3) *Arranging credit.* No bank may arrange for the extension or maintenance of any purpose credit, except upon the same terms and conditions under which the bank itself may extend or maintain purpose credit under this part.

(b) *Purpose statement.* (1) Except for credit extended under paragraph (c) of this section, whenever a bank extends credit secured directly or indirectly by any margin stock, the bank shall require its customer to execute Form F.R. U-1 (OMB No. 7100-0115), which shall be signed and accepted by a duly authorized officer of the bank acting in good faith.

(c) *Purpose statement for revolving credit or multiple-draw agreements.*

(i) If a bank extends credit, secured directly or indirectly by any margin stock, under a revolving credit or other multiple-draw agreement, Form F.R. U-1 can either be executed each time a disbursement is made under the agreement, or at the time the credit arrangement is originally established.

(ii) If a purpose statement executed at the time the credit arrangement is initially made indicates that the purpose is to purchase or carry margin stock, the credit will be deemed in compliance with this part if the maximum loan value of the collateral at least equals the aggregate amount of funds actually disbursed. For any purpose credit disbursed under the agreement, the bank shall obtain and attach to the executed Form F.R. U-1 a current list of collateral which adequately supports all credit extended under the agreement.

(d) *Single credit rule.* (1) All purpose credit extended to a customer shall be treated as a single credit, and all the collateral securing such credit shall be considered in determining whether or not the credit complies with this part.

(2) A bank that has extended purpose credit secured by margin stock may not subsequently extend unsecured purpose credit to the same customer unless the combined credit does not exceed the maximum loan value of the collateral securing the prior credit.

(3) If a bank extended unsecured purpose credit to a customer prior to the extension of purpose credit secured by margin stock, the credits shall be combined and treated as a single credit solely for the purposes of the withdrawal and substitution provision of paragraph (f) of this section.

(4) If a bank extends purpose credit secured by any margin stock and nonpurpose credit to the same customer, the bank shall treat the credits as two separate loans and may not rely upon the required collateral securing the purpose credit for the nonpurpose credit.

(e) *Mixed collateral loans.* A purpose credit secured in part by margin stock, and in part by other collateral shall be treated as two separate loans, one secured by margin stock and one by all other collateral. A bank may use a single credit agreement, if it maintains records identifying each portion of the credit and its collateral.

(f) *Withdrawals and substitutions.* (1) A bank may permit any withdrawal or substitution of cash or collateral by the customer if the withdrawal or substitution would not:

(i) Cause the credit to exceed the maximum loan value of the collateral; or

(ii) Increase the amount by which the credit exceeds the maximum loan value of the collateral.

(2) For purposes of this section, the maximum loan value of the collateral on the day of the withdrawal or substitution shall be used.

(g) *Exchange offers.* To enable a customer to participate in a reorganization, recapitalization or exchange offer that is made to holders of an issue of margin stock, a bank may permit substitution of the securities received. A nonmargin, nonexempted security acquired in exchange for a margin stock shall be treated as if it is margin stock for a period of 60 days following the exchange.

(h) *Renewals and extensions of maturity.* A renewal or extension of maturity of a credit need not be considered a new extension of credit if the amount of the credit is increased only by the addition of interest, service charges, or taxes with respect to the credit.

(i) *Transfers of credit.* (1) A transfer of a credit between customers or banks shall not be considered a new extension of credit if:

(i) The original credit was in compliance with this part;

(ii) The transfer is not made to evade this part;

(iii) The amount of credit is not increased; and

(iv) The collateral for the credit is not changed.

(2) Any transfer between customers at the same bank shall be accompanied by a statement by the transferor customer describing the circumstances giving rise to the transfer and shall be accepted an signed by an officer of the bank acting in good faith. The bank shall keep such statement with its records of the transferee account.

(3) When a transfer is made between banks, the transferee bank shall obtain a copy of the form F.R. U-1 originally filed with the transferor bank and retain the copy with its records of the transferee account.

(j) *Action for bank's protection.* Nothing in this part shall require a bank to waive or forego any lien or prevent a bank from taking any action it deems necessary in good faith for its protection.

(k) *Mistakes in good faith.* A mistake in good faith in connection with the extension of maintenance of credit shall not be a violation of this part.

(l) *Lack of notice of NMS security designation.* Failure to treat an NMS security as a margin stock in connection with an extension of credit shall not be deemed a violation of this part if the designation is made between quarterly publications of the Board's List of OTC Margin Stocks and the bank does not have actual notice of the designation.

[Reg. U, 48 FR 35076, Aug. 3, 1983, as amended at 49 FR 35758, Sept. 12, 1984]

§ 221.4 Agreements of nonmember banks.

(a) Banks that are not members of the Federal Reserve System shall file an agreement that conforms to the requirements of section 8(a) of the Act (See Form T-1 for domestic nonmember banks and Form T-2 for all other nonmember banks) prior to extending any credit secured by any nonexempt security registered on a national securities exchange to persons subject to Part 220 of this chapter, who are borrowing in the ordinary course of business.

(b) Any nonmember bank may terminate its agreement upon written notification to the Board.

§ 221.5 Special purpose loans to brokers and dealers.

(a) *Special purpose loans.* A member bank and a nonmember bank that is in compliance with § 221.4 of this part, may extend and maintain purpose credit to brokers and dealers without regard to the limitations set forth in §§ 221.3 and 221.8 of this part, if the credit is for any of the specific purposes and meets the conditions set forth in paragraph (c) of this section.

(b) *Written notice.* Prior to extending credit for more than a day under this section, the bank shall obtain and accept in good faith a written notice or certification from the borrower as to the purposes of the loan. The written notice or certification shall be evidence of continued eligiblity for the special credit provisions until the borrower notifies the bank that it is no longer eligible or the bank has information that would cause a reasonable person to question whether the credit is being used for the purpose specified.

(c) *Types of special purpose credit.* The types of credit that may be extended and maintained on a good faith basis are as follows:

(1) *Hypothecation loans.* Credit secured by hypothecated customer securities that, according to written notice received from the broker or dealer, may be hypothecated by the broker or dealer under Securities and Exchange Commission ("SEC") rules.

(2) *Temporary advances in payment-against-delivery transactions.* Credit to finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid upon completion of the transaction.

(3) *Loans for securities in transit or transfer.* Credit to finance securities in transit or surrendered for transfer, if the credit is to be repaid upon completion of the transaction.

(4) *Intra-day loans.* Credit to enable a broker or dealer to pay for securities, if the credit is to be repaid on the same day it is extended.

(5) *Arbitrage loans.* Credit to finance proprietary or customer bona fide arbitrage transactions. For the purpose of this section "bona fide arbitrage" means:

(i) Purchase or sale of a security in one market, together with an offsetting sale or purchase of the same security in a different market at nearly the same time as practicable, for the purpose of taking advantage of a difference in prices in the two markets; or

(ii) Purchase of a security that is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security, together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the price of the two securities.

(6) *Distribution loans.* Credit to finance the distribution of securities to customers.

(7) *Odd-lot loans.* Credit to finance the odd lot transactions of a person registered as an odd lot dealer on a national securities exchange.

(8) *Emergency loans.* Credit that is essential to meet emergency needs of the broker-dealer business arising from exceptional circumstances.

(9) *Capital contribution loans.* (i) Credit that Board has exempted by order upon a finding that the exemption is necessary or appropriate in the public interest or for the protection of investors, provided the Securities Investor Protection Corporation certifies to the Board that the exemption is appropriate; or

(ii) Credit to a customer for the purpose of making a subordinated loan or capital contribution to a broker or dealer in conformity with the SEC's net capital rules and the rules of the broker's or dealer's Examining Authority, provided:

(A) The customer reduces the credit by the amount of any reduction in the loan or contribution to the broker or dealer; and

(B) The credit is not used to purchase securities issued by the broker or dealer in a public distribution.

(10) *Loans to specialists.* Credit extended to finance the specialty security and permitted offset positions of members of a national securities exchange who are registered and acting as specialists on the exchange, provided the credit is extended on a good faith loan value basis.

(11) *OTC market maker credit.* Credit to a dealer who has given written notice to the bank that it is a "qualified OTC market maker" in an OTC margin security as defined in SEC Rule 3b-8 (17 CFR 240.3b-8) and that the credit will be used solely for the purpose of financing the market making activity, provided the credit is extended on a good faith loan value basis.

(12) *Third market maker loans.* Credit to a dealer who has given written notice to the bank that it is a "qualified third market maker," as defined in SEC Rule 3b-8 (17 CFR 240.3b-8), and that the credit will be used solely for the purpose of financing positions in securities assumed as a "qualified third market maker," provided the credit is extended on a good faith loan value basis.

(13) *Block positioner credit.* Credit to a dealer who has given written notice to the bank that it is a "qualified block positioner" for a block of securities, as defined in SEC Rule 3b-8 (17 CFR 240.3b-8), and that the credit will be used to finance a position in that block, provided the credit is extended on a good faith loan value basis.

[Reg. U, 48 FR 35076, Aug. 3, 1983, as amended at 48 FR 37361, Aug. 18, 1983]

§ 221.6 Exempted transactions.

A bank may extend and maintain purpose credit without regard to the provisions of this part if such credit is extended:

(a) To any bank;

(b) To any foreign banking insititution;

(c) Outside the United States;

(d) To an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code (26 U.S.C 401);

(e) To any "plan lender" as defined in Part 207 of this chapter to finance such a plan, provided the bank has no recourse to any securities purchased pursuant to the plan;

(f) To any customer, other than a broker or dealer, to temporarily finance the purchase or sale of securities for prompt deliver, if the credit is to be repaid in the ordinary course of business upon completion of the transaction;

(g) Against securities in transit, if the credit is not extended to enable the customer to pay for securities purchased in an account subject to Part 220 of this chapter; or

(h) To enable a customer to meet emergency expenses not reasonably foreseeable, and if the extension of credit is supported by a statement executed by the customer and accepted and signed by an officer of the bank acting in good faith. For this purpose, emergency expenses include expenses arising from circumstances such as the death or disability of the customer, or some other change in circumstances involving extreme hardship, not reasonably foreseeable at the time the credit was extended. The opportunity to realize monetary gain or to avoid loss is not a "change in circumstances" for this purpose.

§ 221.7 Requirements for the list of OTC margin stocks.

(a) *Requirements for inclusion on the list.* Except as provided in paragraph (d) of this section, an OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share;

(3) The stock is registered under section 12 of the Act, is issued by an insurance company subject to section (12)(g)(2)(G) of the Act, is issued by a closed end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under secton 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer had at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who are not officers, directors or beneficial owners of ten percent or more of the stock, or the average daily trading volume of such a stock as determined by the Board, is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list.* Except as provided in paragraph (d) of this section, an OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stocks, as determined by the Board, is at least $2 per share;

(3) The stock is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are coninuously available to the general public;

(5) The issuer has at least $1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who are not officers, directors, or beneficial owners of ten percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Removal from the list.* The Board shall periodically remove from the list any stock that:

(1) Ceases to exist or of which the issuer ceases to exist, or

(2) No longer substantially meets the provisions of paragraph (b) of this section or § 221.2(j).

(d) *Discretionary authority of Board.* Without regard to the other paragraphs of this section, the Board may add to, or omit or remove from, the OTC margin stock list, any equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(e) *Unlawful representations.* It shall be unlawful for any bank to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of OTC margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the list or stocks on that list shall be an unlawful representation.

§ 221.8 Supplement, maximum loan value of margin stock and other collateral.

(a) *Maximum loan value of margin stock.* The maximum loan value of any margin stock expect options is fifty per cent of its current market value.

(b) *Maximum loan value of nonmargin stock and all other collateral.* The maximum loan value of nonmargin stock and all other collateral except puts, calls, or combinations thereof is their good faith loan value.

(c) *Maximum loan value of options.* Except for purposes of §221.5(c)(10) of this part, puts, calls, and combinations thereof have no loan value.

INTERPRETATIONS

§ 221.101 Determination and effect of purpose of loan.

(a) Under this part the original purpose of a loan is controlling. In other words, if a loan originally is not for the purpose of purchasing or carrying registered stocks, changes in the collateral for the loan do not change its exempted character.

(b) However, a so-called increase in the loan is necessarily on an entirely different basis. So far as the purpose of the credit is concerned, it is a new loan, and the question of whether or not it is subject to this part must be determined accordingly.

(c) Certain facts should also be mentioned regarding the determination of the purpose of a loan. Section 221.3(a) provides in that connection that "a bank may rely upon a statement with respect thereto, accepted by the bank in good faith, signed by an officer of the bank or by the borrower." The requirement of "good faith" is of vital importance here. Its application will necessarily vary with the facts of the particular case, but it is clear that the bank must be alert to the circumstances surrounding the loan. For example, if the loan is to be made to a customer who is not a broker or dealer in securities, but such a broker or dealer is to deliver registered stocks to secure the loan or is to receive the proceeds of the loan, the bank would be put on notice that the loan would probably be subject to this part. It could not accept in good faith a statement to the contrary without obtaining a reliable and satisfactory explanation of the situation.

(d) Furthermore, the "purpose" of a loan means just that. It cannot be altered by some temporary application of the proceeds. For example, if a borrower is to purchase Government securities with the proceeds of a loan, but is soon thereafter to sell such securities and replace them with registered stocks, the loan is clearly for the purpose of purchasing or carrying registered stocks.

[12 FR 40, Jan. 3, 1947]

§ 221.102 Designation of New York Stock Exchange for purposes of specialists transactions.

(a) As amended effective July 20, 1949, § 221.3(o) removes the maximum loan level requirements applicable to credit for financing the functions of "specialists" on an exchange designated by the Board of Governors of the Federal Reserve System.

(b) Effective July 20, 1949, the Board of Governors of the Federal Reserve System has designated the New York Stock Exchange pursuant to § 221.3(o), as amended, this designation to be effective until further notice.

[14 FR 4665, July 27, 1949]

§ 221.103 Loans to brokers or dealers.

Questions have arisen as to the adequacy of statements received by lending banks under § 221.3(a) in the case of loans to brokers or dealers secured by stock where the proceeds of the loans are to be used to finance customer transactions involving the purchasing or carrying of registered stocks.

While some such loans may qualify for exemption under § 221.2, unless they do qualify for such an exemption they are subject to this part. For example, if a loan so secured is made to a broker to furnish cash working capital for the conduct of his brokerage business (i.e., for purchasing and carrying securities for the account of customers), the maximum loan value prescribed in § 221.4 would be applicable unless the loan should be of a kind exempted by § 221.2. This result would not be affected by the fact that the stock given as security for the loan was or included stock owned by the brokerage firm.

In view of the foregoing, the statement referred to in § 221.3(a) which the lending bank may accept and rely upon in good faith in determining the purpose of the loan would be inadequate if the form of statement accepted or used by the bank failed to call for answers which would indicate whether or not the loan was of the kind discussed above.

[17 FR 191, Jan. 8, 1952]

§ 221.104 Federal credit unions.

For text of this interpretation, see § 220.110 of this subchapter.

[18 FR 4592, Aug. 5, 1953]

§ 221.105 Arranging for extensions of credit to be made by a bank.

For text of this interpretation, see § 220.111 of this subchapter.

[18 FR 5505, Sept. 15, 1953]

§ 221.106 Reliance in "good faith" on statement of purpose of loan.

(a) Certain situations have arisen from time to time under this part wherein it appeared doubtful that, in the circumstances, the lending banks may have been entitled to rely upon the statements accepted by them in determining whether the purposes of certain loans were such as to cause the loans to be not subject to the part.

(b) The use by a lending bank of a statement in determining the purpose of a particular loan is, of course, provided for by § 221.3(a). However, under that paragraph a lending bank may "rely" upon any such statement only if it is "accepted by the bank in good faith." As the Board stated in the interpretation contained in § 221.101, the "requirement of 'good faith' is of vital importance"; and, to fulfill such requirement, "it is clear that the bank must be alert to the circumstances surrounding the loan".

(c) Obviously, such a statement would not be accepted by the bank in "good faith" if at the time the loan was made the bank had knowledge, from any source, of facts or circumstances which were contrary to the natural purport of the statement, or which were sufficient reasonably to put the bank on notice of the questionable reliability or completeness of the statement.

(d) Furthermore, the same requirement of "good faith" is to be applied whether the statement accepted by the bank is signed by the borrower or by an officer of the bank. In either case, "good faith" requires the exercise of special diligence in any instance in which the borrower is not personally known to the bank or to the officer who processes the loan.

(e) The interpretation set forth in § 221.101 contains an example of the application of the "good faith" test. There it was stated that "if the loan is to be made to a customer who is not a broker or dealer in securities, but such a broker or dealer is to deliver registered stocks to secure the loan or is to receive the proceeds of the loan, the bank would be put on notice that the loan would probably be subject to this part. It could not accept in good faith a statement to the contrary without obtaining a reliable and satisfactory explanation of the situation".

(f) Moreover, and as also stated by the aforementioned interpretation contained in § 221.101, the "purpose" of a loan, of course, "cannot be altered by some temporary application of the proceeds. For example, if a borrower is to purchase Government securities with the proceeds of a loan, but is soon thereafter to sell such securities and replace them with registered stocks, the loan is clearly for the purpose of purchasing or carrying registered stocks". The purpose of a loan therefore, should not be determined upon a narrow analysis of the immediate use to which the proceeds of the loan are put. Accordingly, a bank acting in "good faith" should carefully scrutinize cases in which there is any indication that the borrower is concealing the true purpose of the loan, and there would be reason for special vigilance if registered stocks are substituted for bonds or unregistered stocks soon after the loan is made, or on more than one occasion.

(g) Similarly, the fact that a loan made on the borrower's signature only, for example, becomes secured by registered stock shortly after the disbursement of the loan usually would afford reasonable grounds for questioning the bank's apparent reliance upon merely a statement that the purpose of the loan was not to purchase or carry registered stock.

(h) These examples are, of course, by no means exhaustive. They simply illustrate the fundamental fact that no statement accepted by a bank is of any value for the purposes of the regulation unless "accepted by the bank in good faith", and that "good faith" requires, among other things, reasonable diligence to learn the truth.

[18 FR 5505, Sept. 15, 1953]

§ 221.107 Arranging loan to purchase open-end investment company shares.

For text of this interpretation, see § 220.112 of this subchapter.

[20 FR 1643, Mar. 18, 1955]

§ 221.108 Effect of registration of stock subsequent to making of loan.

(a) The Board recently was asked whether a loan by a bank to enable the borrower to purchase a newly issued stock during the initial over-the-counter trading period prior to the stock becoming registered (listed) on a national securities exchange would be subject to this part. The Board replied that, until such stock is so registered, this would not be applicable to such a loan.

(b) The Board has now been asked what the position of the lending bank would be under this part if, after the date on which the stock should become registered, such bank continued to hold a loan of the kind just described. It is assumed that the loan was in an amount greater than the maximum loan value for the collateral specified in this part.

(c) If the stock should become registered, the loan would then be for the purpose of purchasing or carrying a registered stock, and, if secured directly or indirectly by any stock, would be subject to this part as from the date the stock was registered. Under this part, this does not mean that the bank would have to obtain reduction of the loan in order to reduce it to an amount no more than the specified maximum loan value. It does mean, however, that so long as the loan balance exceeded the specified maximum loan value, the bank could not permit any withdrawals or substitutions of collateral that would increase such excess; nor could the bank increase the amount of the loan balance unless there was provided additional collateral having a maximum loan value at least equal to the amount of the increase. In other words, as from the date the stock should become registered, the loan would be subject to this part in exactly the same way, for example, as a loan subject to this part that became under-margined because of a decline in the current market value of the loan collateral or because of a decrease by the Board in the maximum loan value of the loan collateral.

[21 FR 1094, Feb. 17, 1956]

§ 221.109 Loan to open-end investment company.

In response to a question regarding a possible loan by a bank to an open-end investment company that customarily purchases stocks registered on a national securities exchange, the Board stated that in view of the general nature and operations of such a company, any loan by a bank to such a company should be presumed to be subject to this part as a loan for the purpose of purchasing or carrying registered stocks. This would not be altered by the fact that the open-end company had used, or proposed to use, its own funds or proceeds of the loan to redeem some of its own shares, since mere application of the proceeds of a loan to some other use cannot prevent the ultimate purpose of a loan from being to purchase or carry registered stocks.

[23 FR 8945, Nov. 18, 1958]

§ 221.110 Questions arising under Regulation U.

(a) Regulation U governs "any loan" made by a bank "secured directly or indirectly by any stock for the purpose of purchasing or carrying any stock registered on a national securities exchange", with certain exceptions, and provides that the maximum loan value of such stock shall be a fixed percentage "of its current market value, as determined by any reasonable method."

(b) The Board of Governors has recently had occasion to consider the application of this language to the three following questions:

(1) *Loan secured by stock.* First, is a loan to purchase or carry registered stock subject to Regulation U where

made in unsecured form, if stock is subsequently deposited as security with the lending bank, and surrounding circumstances indicate that the parties originally contemplated that the loan should be so secured? The Board answered that in a case of this kind, the loan would be subject to the Regulation, for the following reasons.

(i) The Board has long held, in the closely related "purpose" area, that the original purpose of a loan should not be determined upon a narrow analysis of the technical circumstances under which a loan is made. Instead, the fundamental purpose of the loan is considered to be controlling. Indeed, "the fact that a loan made on the borrower's signature only, for example, becomes secured by registered stock shortly after the disbursement of the loan" affords reasonable grounds for questioning whether the bank was entitled to rely upon the borrower's statement as to the purpose of the loan. 1953 Bull. 951.

(ii) Where security is involved, standards of interpretation should be equally searching. If, for example, the original agreement between borrower and bank contemplated that the loan should be secured by registered stock, and such stock is in fact delivered to the bank when available, the transaction must be regarded as fundamentally a secured loan. This view is strengthened by the fact that the regulation applies to a loan "secured directly or indirectly by any stock."

(2) *Loan to acquire controlling shares.* (i) The second question is whether the Regulation governs a stock-secured loan made for the business purpose of purchasing a controlling interest in a corporation, or whether such a loan would be exempt on the ground that the Regulation is directed solely toward purchases of stock for speculative or investment purposes. The Board answered that a stock-secured loan for the purpose of purchasing or carrying registered stock is subject to the Regulation, regardless of the reason for which the purchase is made.

(ii) The answer is required, in the Board's view, since the language of the Regulation is explicitly inclusive, covering "any loan * * * secured directly or indirectly by any stock for the purpose of purchasing or carrying any stock registered on a national securities exchange." Moreover, the withdrawal in 1945 of the original section 2(e) of the Regulation, which exempted "any loan for the purpose of purchasing a stock from or through a person who is not a member of a national securities exchange * * *" plainly implies that transactions of the sort described are now subject to the general prohibition of section 1.

(3) *Determination of "current market value."* (i) The third question is how to determine the "current market value" of a block of registered stock which represents a controlling interest in a corporation where the block is purchased at a price in excess of the average of bid and asked prices on the Exchange for the day of the purchase, and also in excess of the average price on the Exchange over recent months, while the parties to the loan, on the other hand, believe the purchase to be a bargain and report opportunities to resell at a price which is higher still. In a case of this kind, the Board believes that the current market value of the block is the price at which the actual purchase was made.

(ii) The Supplement to Regulation U states that current market value shall be determined by "any reasonable method". Regulation T, which, while not controlling, may throw some light on the problem, provides that the current market value of a security "throughout the day of its purchase or sale" shall be "total cost or the net proceeds of its sale." The Board is of the opinion that actual sale price in an arm's length transaction provides the best evidence of value. Particularly in circumstances such as those indicated above, it must be assumed that this price reflects intangible factors including control.

[24 FR 1858, Mar. 14, 1959]

§ 221.111 Purchase-and-sale substitution on same day.

(a) Amendments to Part 221, effective June 15, 1959 (24 FR 3867), deal, among other things, with changes in collateral for a "restricted loan", i.e., a bank loan that exceeds the maximum loan value of the collateral therefor. In connection with those amendments an inquiry has been received as to whether the bank may permit a substitution of collateral for such a loan under the amended part in a case in which the excess of the loan over the maximum loan value is not thereby increased and the substitution occurs in the form of a purchase and sale of collateral, both the purchase and sale orders being executed on the same day.

(b) The bank may permit such a purchase-and-sale substitution under the amended part without additional collateral or reduction in the loan if it reasonably ascertains, and has evidence thereof in its records, that the purchase and sale orders were executed on the same day. The controlling events which must occur on the same day are the executions of the purchase order and sale order, and not the bank's receipt or release of stock certificates. It may be noted that the result is substantially similar to that under the June 15, 1959, amendments to Part 220 of this subchapter. Substitutions that do not involve a same-day purchase and sale are subject to the withdrawal limitations under both parts.

[24 FR 4698, June 10, 1959]

§ 221.112 Loans by bank in capacity as trustee.

(a) The Board's advice has been requested whether a bank's activities in connection with the administration of an employees' savings plan are subject to this Part 221.

(b) Under the plan, any regular, full-time employee may participate by authorizing the sponsoring company to deduct a percentage of his salary and wages and transmit the same to the bank as trustee. Voluntary contributions by the company are allocated among the participants. A participant may direct that funds held for him be invested by the trustee in insurance, annuity contracts, Series E Bonds, or in one or more of three specified securities which are listed on a stock exchange. Loans to purchase the stocks may be made to participants from funds of the trust, subject to approval of the administrative committee, which is composed of five participants, and of the trustee. The bank's right to approve is said to be restricted to the mechanics of making the loan, the purpose being to avoid cumbersome procedures.

(c) Loans are secured by the credit balance of the borrowing participants in the savings fund, including stock, but excluding (in practice) insurance and annuity contracts and government securities. Additional stocks may be, but, in practice, have not been pledged as collateral for loans. Loans are not made, under the plan, from bank funds, and participants do not borrow from the bank upon assignment of the participants' accounts in the trust.

(d) It is urged that loans under the plan are not subject to this Part 221 because a loan should not be considered as having been made by a bank where the bank acts solely in its capacity of trustee, without exercise of any discretion.

(e) The Board reviewed this question upon at least one other occasion in recent years, and full consideration has again been given to the matter. After considering the arguments on both sides, the Board has reaffirmed its earlier view that, in conformity with an interpretation not published in CFR which was published at page 874 of the 1946 Federal Reserve Bulletin, this Part 221 applies to the activities of a bank when it is acting in its capacity as trustee. Although the bank in that case had at best a limited discretion with respect to loans made by it in its capacity as trustee, the Board concluded that this fact did not affect the application of the regulation to such loans.

[25 FR 5923, June 28, 1960]

§ 221.113 Loan which is secured indirectly by stock.

(a) A question has been presented to the Board as to whether a loan by a bank to a mutual investment fund is "secured * * * indirectly by any stock" within the meaning of § 221.1, so that the loan should be treated as subject to the regulation.

(b) Briefly, the facts are as follows. Fund X, an open-end investment company, entered into a loan agreement with Bank Y, which was (and still is) custodian of the securities which comprise the portfolio of Fund X. The agreement includes the following terms, which are material to the question before the Board;

(1) Fund X agrees to have an "asset coverage" (as defined in the agreements) of 400 percent of all its borrowings, including the proposed borrowing, at the time when it takes down any part of the loan.

(2) Fund X agrees to maintain an "asset coverage" of at least 300 percent of its borrowings at all times.

(3) Fund X agrees not to amend its custody agreement with Bank Y, or to substitute another custodian without Bank Y's consent.

(4) Fund X agrees not to mortgage, pledge, or otherwise encumber any of its assets elsewhere than with Bank Y.

(c) In § 221.109 the Board stated that because of "the general nature and operations of such a company", any "loan by a bank to an open-end investment company that customarily purchases stocks registered on a national securities exchange * * * should be presumed to be subject to this part as a loan for the purpose of purchasing or carrying registered stocks" ("purpose loans"). The Board's interpretation went on to say that "This would not be altered by the fact that the open-end company had used, or proposed to use, its own funds or proceeds of the loan to redeem some of its own shares * * *."

(d) Accordingly, the loan by Bank Y to Fund X was and is a "purpose loan". However, a loan by a bank is not subject to this part unless (1) it is a purpose loan and (2) it is "secured directly or indirectly by any stock". In the present case, the loan is not "secured directly" by stock in the ordinary sense, since the portfolio of Fund X is not pledged to secure the credit from Bank Y. But the word "indirectly" must signify some form of security arrangement other than the "direct" security which arises from the ordinary "transaction that gives recourse against a particular chattel or land or against a third party on an obligation" described in the American Law Institute's *Restatement of the Law of Security*, page 1. Otherwise the word "indirectly" would be superflous, and a regulation, like a statute, must be construed if possible to give meaning to every word.

(e) The Board has indicated its view that any arrangement under which stock is more readily available as security to the lending bank than to other creditors of the borrower may amount to indirect security within the meaning of this part. In an interpretation published at § 221.110 it stated.

> The Board has long held, in the * * * "purpose" area, that the original purpose of a loan should not be determined upon a narrow analysis of the technical circumstances under which a loan is made * * * Where security is involved, standards of interpretation should be equally searching.

In its pamphlet issued for the benefit and guidance of banks and bank examiners, entitled "Questions and Answers Illustrating Application of Regulation U", the Board said

> In determining whether a loan is "indirectly" secured, it should be borne in mind that the reason the Board has thus far refrained * * * from regulating loans not secured by stock has been to simplify operations under the regulation. This objective of simplifying operations does not apply to loans in which arrangements are made to retain the substance of stock collateral while sacrificing only the form.

(f) A wide variety of arrangements as to collateral can be made between bank and borrower which will serve, to some extent, to protect the interest of the bank in seeing that the loan is repaid, without giving the bank a conventional direct "security" interest in the collateral. Among such arrangements which have come to the Board's attention are the following:

(1) The borrower may deposit stock in the custody of the bank.

An arrangement of this kind may not, it is true, place the bank in the position of a secured creditor in case of bankruptcy, or even of conflicting claims, but it is likely effectively to strengthen the bank's position. Section 221.3(f), which provides that

> A loan need not be treated as collateralled by securities which are held by the bank only in the capacity of custodian, depositary or trustee, or under similar circumstances, if

the bank in good faith has not relied upon such securities as collateral in the making or maintenance of the particular loan.

does not exempt a deposit of this kind from the impact of the regulation unless it is clear that the bank "has not relied" upon the securities deposited with it.

(2) A borrower may not deposit his stock with the bank, but agree not to pledge or encumber his assets elsewhere while the loan is outstanding.

Such an agreement may be difficult to police, yet it serves to some extent to protect the interest of the bank if only because the future credit standing and business reputation of the borrower will depend upon his keeping his word. If the assets covered by such an agreement include stock, then, as under paragraphs (f)(1) and (3) of this section, the stock is "indirect security" for the loan within the meaning of this part.

(3) The borrower may deposit stock with a third party who agrees to hold the stock until the loan has been paid off. Here, even though the parties may purport to provide that the stock is not "security" for the loan (for example, by agreeing that the stock may not be sold and the proceeds applied to the debt if the borrower fails to pay), the mere fact that the stock is out of the borrower's control for the duration of the loan serves to some extent to protect the bank.

(g) The three instances described above are merely illustrative. Other methods, or combinations of methods, may serve a similar purpose. The conclusion that any given arrangement constitutes "indirect security" may, but need not, be reinforced by facts such as that the stock in question was purchased with proceeds of the loan, that the lending bank suggests or insists upon the arrangement, or that the loan would probably be subject to criticism by supervisory authorities were it not for the protective arrangement.

(h) Accordingly, the Board concludes that the loan by Bank Y to Fund X is indirectly secured by the portfolio of the fund and must be treated by the bank as a regulated loan.

[26 FR 4884, June 2, 1961]

§ 221.114 Bank loans to purchase stock of American Telephone and Telegraph Company under Employees' Stock Plan.

(a) The Board of Governors recently interpreted Part 221 (Regulation U) in connection with proposed loans by a bank to persons who are purchasing shares of stock of American Telephone and Telegraph Company pursuant to its Employees' Stock Plan.

(b) According to the current offering under the Plan, an employee of the AT&T system may purchase shares through regular deductions from his pay over a period of 24 months. At the end of that period, a certificate for the appropriate number of shares will be issued to the participating employee by AT&T. Each employee is entitled to purchase, as a maximum, shares that will cost him approximately three-fourths of his annual base pay. Since the program extends over two years, it follows that the payroll deductions for this purpose may be in the neighborhood of 38 percent of base pay and a larger percentage of "take-home pay." Deductions of this magnitude are in excess of the saving rate of many employees.

(c) Certain AT&T employees, who wish to take advantage of the current offering under the Plan, are the owners of shares of AT&T stock that they purchased under previous offerings. A bank proposed to receive such stock as collateral for a "living expenses" loan that will be advanced to the employee in monthly installments over the 24-month period, each installment being in the amount of the employee's monthly payroll deduction under the Plan. The aggregate amount of the advances over the 24-month period would be substantially greater than the maximum loan value of the collateral as prescribed in § 221.4, the Supplement to Regulation U (30 percent, at the present time).

(d) In the opinion of the Board of Governors, a loan of the kind described would violate this Part 221 if it exceeded the maximum loan value of the collateral. The regulation applies to any stock-secured loan for the purpose of purchasing or carrying stock registered on a national securities exchange (§ 221.1(a)). Although the proposed loan would purport to be for living expenses, it seems quite clear, in view of the relationship of the loan to the Employees' Stock Plan, that its actual purpose would be to enable the borrower to purchase AT&T stock, which is registered on a national securities exchange. At the end of the 24-month period the borrower would acquire a certain number of shares of that stock and would be indebted to the lending bank in an amount approximately equal to the amount he would pay for such shares. In these circumstances, the loan by the bank must be regarded as a loan "for the purpose of purchasing" the stock, and therefore it is subject to the limitations prescribed by this Part 221. This conclusion follows from the provisions of the part, and it may also be observed that a contrary conclusion could largely defeat the basic purpose of the margin regulations.

(e) Accordingly, the Board concluded that a loan of the kind described may not be made in an amount exceeding the maximum loan value of the collateral, as prescribed by the current Supplement to Regulation U (§ 221.4).

[27 FR 5538, June 12, 1962]

§ 221.115 Accepting a purpose statement through the mail without benefit of face-to-face interview.

For text of an interpretation on this subject, see § 207.110 of this subchapter (15 U.S.C. 78g)

[43 FR 30039, July 13, 1978]

§ 221.116 Bank loans to replenish working capital used to purchase mutual fund shares.

(a) In a situation recently considered by the Board of Governors, a business concern ("X") proposed to purchase mutual fund shares, from time to time, with proceeds from its accounts receivable, then pledge the shares with a bank in order to secure working capital. The bank was prepared to lend amounts equal to 70 percent of the current value of the shares as they were purchased by X. If the loans were subject to this part (Regulation U), only 30 percent of the current market value of the shares could be lent.

(b) The immediate purpose of the loans would be to replenish X's working capital. However, as time went on, X would be acquiring mutual fund shares at a cost that would exceed the net earnings it would normally have accumulated, and would become indebted to the lending bank in an amount approximately 70 percent of the prices of said shares.

(c) The Board held that the loans were for the purpose of purchasing the shares, and therefore subject to the limitations prescribed by this part. As pointed out in § 221.114 with respect to a similar program for putting a high proportion of cash income into stock, then borrowing against the stock to meet needs for which the cash would otherwise have been required, a contrary conclusion could largely defeat the basic purpose of the margin regulations.

(d) Also considered was an alternative proposal under which X would deposit proceeds from accounts receivable in a time account for 1 year, before using those funds to purchase mutual fund shares. The Board held that this procedure would not change the situation in any significant way. Once the arrangement was established, the proceeds would be flowing into the time account at the same time that similar amounts were released to purchase the shares, and over any extended period of time the result would be the same. Accordingly, the Board concluded that bank loans made under the alternative proposal would similarly be subject to this part.

[32 FR 8357, June 10, 1967]

§ 221.117 When bank in "good faith" has not relied on stock as collateral.

(a) The Board has received questions regarding the circumstances in which an extension or maintenance of credit will not be deemed to be "indirectly secured" by stock as indicated by the phrase, "if the bank in good faith has not relied upon such stock as collateral," contained in clause (2) of a recent amendment to § 221.3(c) of Regulation U. A similar phrase is contained in

§ 207.2(g) of Regulation G of this chapter and the following applies to that paragraph, insofar as appropriate and consistent.

(b) In response, the Board noted that in amending this portion of the regulation it was indicated that one of the purposes of the change was to make clear that § 221.3(c) does not apply to certain routine negative covenants in loan agreements. Also, while the question of whether or not a bank has relied upon particular stock as collateral is necessarily a question of fact to be determined in each case in the light of all relevant circumstances, some indication that the bank had not relied upon stock as collateral would seem to be afforded by such circumstances as the fact that (1) the bank had obtained a reasonably current financial statement of the borrower and this statement could reasonably support the loan, and (2) the loan was not payable on demand or because of fluctuations in market value of the stock, but instead was payable on one or more fixed maturities which were typical of maturities applied by the bank to loans otherwise similar except for not involving any possible question of stock collateral.

[33 FR 7465, May 21, 1968]

§ 221.118 Bank arranging for extension of credit by corporation.

For text of this interpretation, see § 207.103 of this subchapter.

(15 U.S.C. 78g)

[34 FR 7005, Apr. 29, 1969]

§ 221.119 Status after July 8, 1969, of credit extended prior to that date to purchase or carry mutual fund shares.

(a) Prior to July 8, 1969, the margin and other requirements of Regulations G and U applied to credit extended to purchase or carry shares of a mutual fund (secured by certain described collateral), if (1) the portfolio of the fund did "customarily include" securities that would themselves have been subject to the regulations and (2) the fund was included in a list of such funds that the Board published for this purpose.

(b) It was found that virtually all mutual funds met the "customarily include" test. Accordingly, for administrative reasons, the Board discontinued publication of the list and restated the rule to cover all mutual funds except those at least 95 percent of whose assets are continuously invested in exempted securities.

(c) The Board made these changes, effective July 8, 1969, in Regulation G (Code of Federal Regulations, Title 12, Part 207) by adding a new § 207.2(d) (while eliminating former § 207.2(c)(3) and § 207.4(b)), and in Regulation U (Code of Federal Regulations, Title 12, Part 221) by adding a new § 221.3(v) (while eliminating former § 221.(b)(3) and § 221.3(d)).

(d) The Board has received several questions respecting the effect of the amendments on certain stock-secured credits that were extended prior to July 8, 1969, to purchase or carry mutual fund shares and were treated as not subject to Regulations G or U at the time of extension on the ground that the funds were not on the Board's published list.

(e) The Board has held that whether a loan is for the purpose of purchasing or carrying a stock not registered on a national securities exchange depends on the present status of the stock. Thus, a credit is treated as one for such a purpose if used to purchase or carry a stock that became registered after the loan was made. (1937 Federal Reserve Bulletin 955; Published Interpretations Par. 6435). The converse is also true (1938 Federal Reserve Bulletin 90; Published Interpretations Par. 6445).

(f) The same principle applies to the closely parallel question in the present case. Credits extended before July 8, 1969, to purchase or carry shares in the mutual funds in question were for the purpose of purchasing or carrying "margin stocks" (Regulation U) or "margin securities" (Regulation G) even though at the time of extension, the funds were not on the Board's published list. Accordingly, if collateralized as specified in the regulations, the credits were subject to the pertinent regulation from the effective date of the amendments, July 8, 1969.

(g) In applying the above interpretation, it should be borne in mind that the Board's margin regulations are based on (1) the requirement of an initial deposit in connection with the original extension of a credit, and (2) limitations on substitutions or withdrawals of the collateral securing a credit.

(h) In the latter category, the Board's margin regulations apply a retention requirement to proceeds of a sale of collateral in an undermargined loan (except for a same-day sale-and-purchase substitution) in order to strengthen the margin status of the loan (§ 207.1(j) of Regulation G and § 221.1(b) of Regulation U). While this requirement became applicable on July 8, 1969, to credit previously extended to purchase shares in mutual funds that had not been on the Board's list prior to that date, the Board, in view of all the circumstances, will not insist upon reconstitution of loans to take account of withdrawals and substitutions of collateral before April 27, 1970, the date of issuance of this interpretation, even though henceforth all withdrawals and substitutions must comply with the requirement.

(i) Application of § 221.3(q): Section 221.3(q) of Regulation U provides that credit extended by banks to a customer who is engaged "principally, or as one of the customer's important activities," in the business of extending credit to purchase or carry margin securities is considered to be extended for that purpose. Banks extending credit to such customers must treat the credit as subject to that regulation, and the credit must comply with all the requirements thereof "unless the credit and its purposes are effectively and unmistakably separated and disassociated from any financing or refinancing, for the customer or others, of any purchasing or carrying of [margin] stocks."

(j) Since credit to purchase or carry mutual fund shares (no matter when extended) is credit to purchase or carry margin stocks, any person or organization that engages, as an important activity, in extending credit to purchase or carry such shares (with the exception mentioned) is a lender subject to § 221.3(q) even though the funds were not on the Board's list prior to July 8, 1969. However, as stated above, as an administrative matter the retention requirements of the regulations need apply only to all substitutions and withdrawals, occurring on or after April 27, 1970, of collateral securing such credit.

(k) In view of the likelihood that § 221.3(q) applies to any loan to any financial institution which has pledged or offers to pledge mutual fund shares, particularly shares which were not on the Board's list prior to July 8, 1969, a bank should treat any such loan as being subject to the requirements of the regulation unless the borrower supplies clear proof, to be preserved in the files of the bank, that § 221.3(q) does not apply or that the loan is "separated and disassociated" as specified in the section. In this connection, a general statement, such as that the credit is for "working capital" or "general corporate purposes", is insufficient evidence that the requirements of the regulation are not applicable.

[35 FR 6959, May 1, 1970]

§ 221.120 Allocation of stock collateral to purpose and nonpurpose credits to same customer.

(a) A bank proposes to extend two credits (Credits "A" and "B") to its customer. Although the two credits are proposed to be extended at the same time, each would be evidenced by a separate agreement. Credit A would be extended for the purpose of providing the customer with working capital (nonpurpose credit), collateralized by stock. Credit B would be extended for the purpose of purchasing or carrying margin stock (purpose credit), without collateral or on collateral other than stock.

(b) Regulation U allows a bank to extend purpose and nonpurpose credits simultaneously or successively to the same customer. This rule is expressed in § 221.3(n)(3) which provides in substance that for any nonpurpose credit to the same customer, the bank shall in good faith require as much collateral not already identified to the customer's purpose credit as the bank would require if it held neither the purpose loan nor the identified collateral. This rule also takes into account that the bank would not necessarily be required to hold collateral for the nonpurpose credit if, consistent with good faith banking practices, it would normally make this kind of nonpurpose loan without collateral.

(c) The Board views § 221.3(n)(3) of Regulation U, when read in conjunction with § 221.3(n)(1), as requiring that whenever a bank extends two credits to the same customer, one a purpose credit and the other nonpurpose, any stock collateral must first be identified with and attributed to the purpose loan by taking into account the maximum loan value of such collateral as prescribed in § 221.4 (the Supplement) of Regulation U.

(d) The Board is further of the opinion that under the foregoing circumstances Credit B would be indirectly secured by stock, despite the fact that there would be separate loan agreements for both credits. This conclusion flows from the circumstance that the bank would hold in its possession stock collateral to which it would have access with respect to Credit B, despite any ostensible allocation of such collateral to Credit A.

[36 FR 25150, Dec. 29, 1971]

§ 221.121 Computation of time periods for acquiring and holding blocks of stock by block positioners.

(a) The Board recently considered two questions in connection with § 221.3 (z) (2) and (3) of Regulation U providing for bank credit to block positioners which is exempt from the normal margin requirements as prescribed from time to time in that regulation.

(b) The first question pertained to the period of time in which a block positioner, in order to qualify for the exemption, must position a block of stock when such positioning results from several transactions at approximately the same time from a single source, as set forth in § 221.3(z)(2)(ii).

(c) The Board is of the view that the aggregate of several transactions from a single source would ordinarily be carried out within a timespan of one-half hour in order for such aggregate to be considered one block of stock eligible for exempt credit. In extraordinary circumstances, however, the block positioner could consult the Reserve Bank in whose district its office is situated as to whether stock positioned over a slightly longer period constitutes a single block. In such a case the block positioner should, of course, disclose all relevant circumstances to the Reserve Bank.

(d) The second question related to the computation of the period of 20 business days, specified in § 221.3(z)(3), in which exempt credit may remain outstanding for positioning a block of stock.

(e) The Board is of the view that the computation of such 20-day period shall commence on the business day following the date of trade.

[37 FR 24105, Nov. 14, 1972; 37 FR 26315, Dec. 9, 1972]

§ 221.122 Applicability of margin requirements to credit in connection with Insurance Premium Funding Programs.

For text of this interpretation, see § 207.108 of this subchapter.

(Interprets and applies 12 CFR 207.4(f) and 12 CFR 221.3(x))

[39 FR 9425, Mar. 11, 1974]

§ 221.123 Bona fide arbitrage transactions.

For the text of this interpretation, see § 220.126 of this subchapter.

(Interprets and applies 12 CFR 220.4(c), 220.4(d))

[Reg. U. 38 FR 5237, Feb. 27, 1973; 40 FR 59322, Dec. 23, 1975]

PART 224—BORROWERS OF SECURITIES CREDIT

Sec.
224.1 Authority, purpose and scope.
224.2 Definitions.
224.3 Margin regulations to be applied by nonexempted borrowers.

AUTHORITY: Sec. 7(f), as amended (15 U.S.C. 78a-jj).

SOURCE: Reg. X, 48 FR 56572, Dec. 22, 1983, unless otherwise noted.

§ 224.1 Authority, purpose, and scope.

(a) *Authority and purpose.* Regulation X (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) under the Securities Exchange Act of 1934, as amended (the Act) (15 U.S.C. 78a et seq.). This part implements section 7(f) of the Act (15 U.S.C. 78g(f)), the purpose of which is to require that credit obtained within or outside the United States complies with the limitations of the Board's Margin Regulations G, T, and U (12 CFR Parts 207, 220, and 221, respectively).

(b) *Scope and exemptions.* The Act and this part apply the Board's margin regulations to United States persons and foreign persons controlled by or acting on behalf of or in conjunction with United States persons (hereinafter borrowers), who obtain credit outside the United States to purchase or carry United States securities, or within the United States to purchase or carry any securities (both types of credit are hereinafter referred to as purpose credit). The following borrowers are exempt from the Act and this part:

(1) Any borrower who obtains purpose credit within the United States, unless the borrower willfully causes the credit to be extended in contravention of Regulations G, T, or U.

(2) Any borrower whose permanent residence is outside the United States and who does not obtain or have outstanding, during any calendar year, a total of more than $100,000 in purpose credit obtained outside the United States; and

(3) Any borrower who is exempt by Order upon terms and conditions set by the Board.

§ 224.2 Definitions.

The terms used in this part have the meanings given to them in sections 3(a) and 7(f) of the Act, and in Regulations G, T, and U. Section 7(f) of the Act contains the following definitions:

(a) "United States person" includes a person which is organized or exists under the laws of any State or, in the case of a natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has a cumulative direct or indirect beneficial interest in excess of 50 per centum of the valve of the trust.

(b) "United States security" means a security (other than an exempted security) issued by a person incorporated under the laws of any State, or whose principal place of business is within a State.

(c) "Foreign person controlled by a United States person" includes any noncorporate entity in which United States persons directly or indirectly have more than a 50 per centum beneficial interest, and any corporation in which one or more United States persons, directly or indirectly, own stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock.

§ 224.3 Margin regulations to be applied by nonexempted borrowers.

(a) *Credit transactions outside the United States.* No borrower shall obtain purpose credit from outside the United States unless it conforms to the following margin regulations:

(1) Regulation T (12 CFR Part 220) if the credit is obtained from a foreign branch of a broker-dealer;

(2) Regulation U (12 CFR Part 221) if the credit is obtained from a foreign branch of a bank, except for the requirement of a purpose statement (12 CFR 221.3 (b) and (c)); and

(3) Regulation G (12 CFR Part 207) if the credit is obtained from any other lender outside the United States, except for the requirement of a purpose statement (12 CFR 207.3 (e) and (f)).

(b) *Credit transactions within the United States.* Any borrower who willfully causes credit to be extended in contravention of Regulations G, T, or U, and who, therefore, is not exempted by § 224.1(b)(1) of this part, must conform the credit to the margin regulation that applies to the lender.

(c) *Inadvertent noncompliance.* No borrower who inadvertently violates this part and who acts to remedy the violation as soon as practicable shall be deemed in violation of this part.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

REGULATIONS

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AUTHORITY: 12 U.S.C. 1844(b), 3106, 3108, 1817(j)(13), 1818(b); and Pub L. 98-181, Title IX.

SOURCE: Reg. Y, 49 FR 818, Jan. 5, 1984, unless otherwise noted.

REGULATIONS

Subpart A—General Provisions

§ 225.1 Authority, purpose, and scope.

(a) *Authority.* This part (Regulation Y) is issued by the Board of Governors of the Federal Reserve System ("Board") under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)) ("BHC Act"); sections 8 and 13(a) of the International Banking Act of 1978 (12 U.S.C. 3106 and 3108); section 7(j)(13) of the Federal Deposit Insurance Act, as amended by the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(13) ("Bank Control Act"); section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)); and the International Lending Supervision Act of 1983 (Pub. L. 98-181, Title IX). The BHC codified at 12 U.S.C. 1841, *et seq.*

(b) *Purpose.* The principal purposes of this part are to regulate the acquisition of control of banks by companies and individuals, to define and regulate the nonbanking activities in which bank holding companies and foreign banking organizations with United States operations may engage, and to set forth the procedures for securing approval for such transactions and activities.

(c) *Scope.* (1) Subpart A contains general provisions and definitions of terms used in this regulation.

(2) Subpart B governs acquisitions of bank or bank holding company securities and assets by bank holding companies or by any company that will become a bank holding company as a result of the acquisition.

(3) Subpart C defines and regulates the nonbanking activities in which bank holding companies and foreign banking organizations may engage directly or through a subsidiary. In addition, certain nonbanking activities conducted by foreign banking organizations and certain foreign activities conducted by bank holding companies are governed by the Board's Regulation K (12 CFR Part 211, International Banking Operations).

(4) Subpart D specifies situations in which a company is presumed to control voting securities or to have the power to exercise a controlling influence over the management or policies of a bank or other company, sets forth the procedures for making a control determination, and provides rules governing the effectiveness of divestitures by bank holding companies.

(5) Subpart E governs changes in bank control resulting from the acquisition by individuals or companies (other than bank holding companies) of voting securities of a bank holding company or state member bank of the Federal Reserve System.

(6) Appendix A to the regulation contains the Board's Capital Adequacy Guidelines for bank holding companies and for state member banks.

(7) Appendix B to the regulation contains the Board's Policy Statement for Formation of Small One-Bank Holding Companies.

§ 225.2 Definitions.

Except as modified in this section or unless the context otherwise requires, the terms used in this regulation have the same meanings as set forth in the relevant statutes.

(a)(1) "Bank" means any institution organized under the laws of the United States that:

(i) Accepts deposits that the depositor has a legal right to withdraw on demand and

(ii) Engages in the business of making commercial loans. For the purposes of this definition:

(A) "Deposits that the depositor has a legal right to withdraw on demand" (hereinafter "demand deposits") means any deposit with transactional capability that, as a matter of practice, is payable on demand and that is withdrawable by check, draft, negotiable order of withdrawal, or other similar instrument; and

(B) "Commercial loans" means any loan other than a loan to an individual for personal, family, household, or charitable purposes, and includes the purchase of retail installment loans or commercial paper, certificates of deposit, bankers' acceptances, and similar money market instruments, the extension of broker call loans, the sale of federal funds, and the deposit of interest-bearing funds.

(2) "Bank" includes any state-chartered bank or national banking association that

(i) Is owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions, or by a bank holding company owned exclusively by other depository institutions; and

(ii) Is organized to engage exclusively in providing services for other depository institutions and their officers, directors, and employees.

(3) "Bank" does not include:

(i) Any institution that does not do business in the United States except as an incident to its activities outside the United States;

(ii) Any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any institution chartered by the Federal Home Loan Bank Board; or

(iii) "Agreement" or "Edge" corporations operating under sections 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601-604(a), 611-631).

(b)(1) "Bank holding company" means any company (including a bank) that has direct or indirect control of a bank, other than control that results from the ownership or control of:

(i) Voting securities held in good faith in a fiduciary capacity (other than as provided in paragraphs (d)(2)(ii) and (iii) of this section) without sole discretionary voting authority, or as otherwise exempted under section 2(a)(5)(A) of the BHC Act;

(ii) Voting securities acquired and held only for a reasonable period of time in connection with the underwriting of securities, as provided in section 2(a)(5)(B) of the BHC Act;

(iii) Voting rights to voting securities acquired for the sole purpose and in the course of participating in a proxy solicitation, as provided in section 2(a)(5)(C) of the BHC Act;

(iv) Voting securities acquired in satisfaction of debts previously contracted in good faith, as provided in section 2(a)(5)(D) of the BHC Act, if the securities are divested within two years of acquisition (or such later period as the Board may permit by order); or

(v) Voting securities of certain institutions owned by a thrift institution or a trust company, as provided in sections 2(a)(5)(E) and (F) of the BHC Act.

(2) Except for the purposes of § 225.4(b) of this subpart and Subpart E of this regulation or as otherwise provided in this regulation, the term "bank holding company" includes a foreign banking organization. For the purposes of Subpart B, the term "bank holding company" includes a foreign banking organization only if it owns or controls a bank in the United States.

(c)(1) "Company" includes any bank, corporation, general or limited partnership, association or similar organization, business trust, or any other trust unless by its terms it must terminate either within 25 years, or within 21 years and 10 months after the death of individuals living on the effective date of the trust.

(2) "Company" does not include any organization, the majority of the voting securities of which are owned by the United States or any state.

(d)(1) "Control" of a bank or other company means (except for the purposes of Subpart E):

(i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the bank or other company, directly or indirectly or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the bank or other company;

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the bank or other company, as determined by the Board after notice and opportunity for hearing in accordance with § 225.31 of Subpart D of this regulation; or

(iv) Conditioning in any manner the transfer of 25 percent or more of the outstanding shares of any class of voting securities of a bank or other company upon the transfer of 25 percent or more of the outstanding shares of any class of voting securities of another bank or other company.

(2) A bank or other company is deemed to control voting securities or assets owned, controlled, or held, directly or indirectly:

(i) By any subsidiary of the bank or other company;

(ii) In a fiduciary capacity (including by pension and profit-sharing trusts) for the benefit of the shareholders, members, or employees (or individuals serving in similar capacities) of the bank or other company or of any of its subsidiaries; or

(iii) In a fiduciary capacity for the benefit of the bank or other company or any of its subsidiaries.

(e) "Foreign banking organization" and "qualifying foreign banking organization" shall have the same meanings as provided in § 211.23 of the Board's Regulation K (12 CFR 211.23).

(f) "Management official" means any officer, director (including honorary or advisory directors), partner, or trustee of a bank or other company, or any employee of the bank or other company with policy-making functions.

(g) "Outstanding shares" means any voting securities, but does not include securities owned by the United States or by a company wholly-owned by the United States.

(h) "Person" includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(i) "Principal shareholder" means a person that owns or controls, directly or indirectly, 25 percent or more of any class of voting securities of a bank or other company.

(j) "Subsidiary" means a bank or other company that is controlled by another company, and refers to a direct or indirect subsidiary of a bank holding company. An indirect subsidiary is a bank or other company that is controlled by a subsidiary of the bank holding company.

(k) "United States" means the United States and includes any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(l) (1) "Voting securities" means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statue, charter, or in any manner, entitle the holder: (i) to vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or (ii) to vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) Preferred shares, limited partnership shares or interests, or similar interests are not "voting securities" if:

(i) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

§ 225.3 Administration.

(a) *Delegation of authority.* Designated Board members and officers and the Federal Reserve Banks are authorized by the Board to exercise various functions prescribed in this regulation and in the Board's Rules Regarding Delegation of Authority (12 CFR Part 265) and the Board's Rules of Procedure (12 CFR Part 262).

(b) *Appropriate Federal Reserve Bank.* In administering this regulation, the appropriate Federal Reserve Bank is as follows:

(1) For a bank holding company (or a company applying to become a bank holding company): the Reserve Bank of the Federal Reserve district in which the company's banking operations are principally conducted, as measured by total domestic deposits in its subsidiary banks on the date it became (or will become) a bank holding company;

(2) For a foreign banking organization that has no subsidiary bank and is not subject to paragraph (b)(1) of this section: the Reserve Bank of the Federal Reserve district in which the total assets of the organization's United States branches, agencies, and commercial lending companies are the largest as of the later of January 1, 1980, or the date it becomes a foreign banking organization;

(3) For an individual or company submitting a notice under Subpart E of this regulation: the Reserve Bank of the Federal Reserve district in which the banking operations of the bank holding company or State member bank to be acquired are principally conducted, as measured by total domestic deposits on the date the notice is filed.

§ 225.4 Corporate practices.

(a) *Bank holding company policy and operations.* (1) A bank holding company shall serve as a source of financial and mangerial strength to its subsidiary banks and shall not contuct its operations in an unsafe or unsound manner.

(2) Whenever the Board believes an activity of a bank holding company or control of a nonbank subsidiary (other than a nonbank subsidiary of a bank) constitutes a serious risk to the financial safety, soundness, or stability of a subsidiary bank of the bank holding company and is inconsistent with sound banking principles or the purposes of the BHC Act or the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*), the Board may require the bank holding company to terminate the activity or to terminate control of the subsidiary, as provided in section 5(e) of the BHC Act.

(b) *Purchase or redemption by a bank holding company of its own securities*—(1) *Filing notice.* A bank holding company shall give the Board prior written notice before purchasing or redeeming its equity securities, if the gross consideration for the purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to 10 percent or more of the company's consolidated net worth. For the purposes of this section, "net consideration" is the gross consideration paid by the company for all of its equity securities purchased or redeemed during the period minus the gross consideration received for all of its equity securities sold during the period other than as part of a new issue.

(2) *Content of notice.* Any notice under this section shall be filed with the appropriate Reserve Bank and shall contain the following information:

(i) The purpose of the transaction, a description of the securities to be purchased or redeemed, the total number of each class outstanding, the gross consideration to be paid, and the terms of any debt incurred in connection with the transaction;

(ii) A description of all equity securities redeemed within the preceding 12 months, the net consideration paid, and the terms of any debt incurred in connection with those transactions; and

(iii) A current and *pro forma* consolidated balance sheet if the bank holding company has total assets of over $150 million, or a current and *pro forma* parent company only balance sheet if the bank holding company has total assets of $150 million or less.

(3) *Acting on notice.* Within 30 calendar days of receipt of a notice under this section, the appropriate Reserve Bank shall either approve the transaction proposed in the notice or refer the notice to the Board for decision. If the notice is referred to the Board for decision, the Board shall act on the notice within 60 calendar days after the Reserve Bank receives the notice.

(4) *Factors considered in acting on notice.* The Board may disapprove a proposed purchase or redemption if it finds that the proposal would constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or any condition imposed by, or written agreement with, the Board. In determining whether a proposal constitutes an unsafe or unsound practice, the Board will consider whether the bank holding company's financial condition, after giving effect to the proposed purchase or redemption, meets the financial standards applied by the Board under section 3 of the BHC Act, including the Board's Capital Adequacy Guidelines (Appendix A to Subparts A through E) and the Board's Policy Statement for Formation of Small One-Bank Holding Companies (Appendix B to Subparts A through E).

(5) *Disapproval and hearing.* The Board shall notify the bank holding company in writing of the reasons for a decision to disapprove any proposed purchase or redemption. Within 10 calendar days of receipt of a notice of disapproval by the Board, the bank holding company may submit a written request for a hearing. The Board will order a hearing within 10 calendar days of receipt of that request if it finds that material facts are in dispute or if it otherwise appears appropriate. Any hearing conducted under this paragraph shall be held in accordance with the Board's Rules of Practice for Formal Hearings (12 CFR Part 263). At the conclusion of the hearing, the Board shall by order approve or disapprove the proposed purchase or redemption on the basis of the record of the hearing.

(c) *Deposit insurance.* Every bank that is a bank holding company or a subsidiary of a bank holding company shall obtain Federal Deposit Insurance and shall remain an "insured bank" as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)).

(d) *Tie-in arrangements.* A bank holding company and any nonbanking subsidiary conducting an activity authorized under § 225.23 of this regulation may not in any manner extend credit, lease or sell property of any kind, provide any service, or fix or vary the consideration for any of these transactions subject to any condition or requirement that, if imposed by a bank, would constitute an unlawful tie-in arrangement under section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971, 1972(1)).

(e) *Acting as transfer agent, municipal securities dealer, or clearing agent.* A bank holding company or any nonbanking subsidiary that is a "bank," as defined in section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6)), and that is a transfer agent of securities, a municipal securities dealer, a clearing agency, or a participant in a clearing agency (as those terms are defined in section 3(a) of the Securities Exchange Act, (12 U.S.C. 78c(a)), shall be subject to §§ 208.8(f)-(j) of the Board's Regulation H (12 CFR 208.8(f)-(j)) as if it were a state member bank.

§ 225.5 Registration, reports, and inspections.

(a) *Registration of bank holding companies.* Each company shall register within 180 days after becoming a bank holding company by furnishing information in the manner and form prescribed by the Board. A company that receives the Board's prior approval under Subpart B of this regulation to become a bank holding company may complete this registration requirement through submission of its first annual report to the Board as required by paragraph (b) of this section.

(b) *Reports of bank holding companies.* Each bank holding company shall furnish, in the manner and form prescribed by the Board, an annual report of the company's operations for the fiscal year in which it becomes a bank holding company, and for each fiscal year during which it remains a bank holding company. Additional information and reports shall be furnished as the Board may require.

(c) *Examinations and inspections.* The Board may examine or inspect any bank holding company and each of its subsidiaries and prepare a report of their operations and activities. With respect to a foreign banking organization, the Board may also examine any branch or agency of a foreign bank in any state of the United States and may examine or inspect each of the organization's subsidiaries in the United States and prepare reports of their operations and activities. The Board will rely as far as possible on the reports of examination made by the primary federal or state supervisor of the subsidiary bank of a bank holding company or of the branch or agency of the foreign bank.

§ 225.6 Penalties for violations.

(a) *Criminal and civil penalties.* Section 8 of the BHC Act provides criminal penalties for willful violation, and civil penalties for violation, by any company or individual of the BHC Act or any regulation or order issued under it, or for making a false entry in any book, report, or statement of a bank holding company. Civil money penalty assessments for violations of the BHC Act shall be made in accordance with Subpart B of the Board's Rules of Practice for Hearings (12 CFR Part 263, Subpart B). For any willful violation of the Bank Control Act or any regulation or order issued under it, the Board may assess a civil penalty as provided in 12 U.S.C. 1817(j)(15).

(b) *Cease and desist proceedings.* For any violation of the BHC Act, the Bank Control Act, this regulation, or any order or notice issued thereunder, the Board may institute a cease and desist proceeding in accordance with the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*).

Subpart B—Acquisition of Bank Securities or Assets

§ 225.11 Transactions requiring Board approval.

The following transactions require an application for the Board's prior approval under section 3 of the BHC Act unless otherwise exempted under § 225.12 of this Subpart:

(a) *Formation of bank holding company.* Any action that causes a bank or other company to become a bank holding company.

(b) *Acquisition of subsidiary bank.* Any action that causes a bank to become a subsidiary of a bank holding company.

(c) *Acquisition of control of bank or bank holding company securities.* The acquisition by a bank holding company of direct or indirect ownership or control of any voting securities of a bank or bank holding company, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the bank or bank holding company. An acquisition includes the purchase of additional securities through the exercise of preemptive rights, but does not include securities received in a stock dividend or stock split that does not alter the bank holding company's proportional share of any class of voting securities.

(d) *Acquisition of bank assets.* The acquisition by a bank holding company or by a subsidiary thereof (other than a bank) of all or substantially all of the assets of a bank.

(e) *Merger of bank holding companies.* The merger or consolidation of bank holding companies, including a merger through the purchase of assets and assumption of liabilities.

§ 225.12 Transactions not requiring Board approval.

The following transactions do not require the Board's approval under § 225.11 of this Subpart:

(a) *Acquisition of securities in fiduciary capacity.* The acquisition by a bank or other company (other than a trust that is a company) of control of voting securities of a bank or bank holding company in good faith in a fiduciary capacity, unless:

(1) The acquiring bank or other company has sole discretionary authority to vote the securities and retains the authority for more than two years; or

(2) The acquisition is for the benefit of the acquiring bank or other company, or its shareholders, employees, or subsidiaries.

(b) *Acquisition of securities in satisfaction of debts previously contracted.* The acquisition by a bank or other company of control of voting securities of a bank or bank holding company in the regular course of securing or collecting a debt previously contracted in good faith, if the acquiring bank or other company divests the securities within two years of acquisition. The Board or Reserve Bank may grant requests for up to three one-year extensions.

(c) *Acquisition of securities by a bank holding company with majority control.* The acquisition by a bank holding company of additional voting securities of a bank or bank holding company if more than 50 percent of the outstanding voting securities of the bank or bank holding company is lawfully controlled by the acquiring bank holding company prior to the acquisition.

(d) *Transactions subject to Bank Merger Act.* The merger or consolidation of a subsidiary bank of a bank holding company with another bank, or the purchase of assets by such a subsidiary bank, or a similar transaction involving subsidiary banks of a bank holding company, if the transaction requires the prior approval of a Federal supervisory agency under the Bank Merger Act (12 U.S.C. 1828(c)). This exception does not include:

(1) The merger of a nonsubsidiary bank and a nonoperating subsidiary bank formed by a company for the purpose of acquiring the nonsubsidiary bank; and

(2) Any transaction requiring the Board's prior approval under § 225.11(e) of this Subpart. The Board may require an application under this subpart if it determines that the merger or consolidation would have a significant adverse impact on the financial condition of the bank holding company or otherwise requires approval under section 3 of the BHC Act.

(e) *Holding securities in escrow.* The holding of any voting securities of a bank or bank holding company in an escrow arrangement for the benefit of an applicant pending the Board's action on an application for approval of the proposed acquisition, if title to the securities and the voting rights remain with the seller and payment for the securities has not been made to the seller.

§ 225.13 Factors considered in acting on bank applications.

(a) *Prohibited anticompetitive transactions.* As specified in sections 3(c)(1) and (2) of the BHC Act, the Board may not approve any application under this subpart if:

(1) The transaction would result in a monopoly or would further any combination or conspiracy to monopolize, or to attempt to monopolize, the business of banking in any part of the United States; or

(2) The effect of the transaction may be substantially to lessen competition in any section of the country, tend to create a monopoly, or in any other manner be in restraint of trade, unless the Board finds that the transaction's anticompetitive effects are clearly outweighed by its probable effect in meeting the convenience and needs of the community.

(b) *Other factors.* In deciding applications under this subpart, the Board also considers the following factors with respect to the applicant, its subsidiaries, any banks related to the applicant through common ownership or management, and the bank or banks to be acquired:

(1) *Financial condition.* Their financial condition and future prospects, including whether current and projected capital positions and levels of indebtedness conform to standards and policies established by the Board.

(2) *Management.* The competence and character of the principals of the applicant and banks or bank holding companies concerned; their record of compliance with laws and regulations; and applicant's record of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.

(3) *Convenience and needs of the community.* The convenience and needs of the communities to be served, including the record of performance under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) and regulations issued thereunder, including the Board's Regulation BB (12 CFR Part 228).

(c)(1) *Interstate transactions.* The Board may not approve any application under this subpart that would permit:

(i) The formation of a bank holding company that controls more than 5 percent of the outstanding shares of any class of voting securities of two or more banks located in different states; or

(ii) The acquisition by a bank holding company or by any of its subsidiaries of any voting securities of, any interest in, or substantially all of the assets of, an additional bank located in a state other than the state in which the operations of the banking subsidiaries of the bank holding company were principally conducted (as measured by total deposits) on July 1, 1966, or on the date on which the company became a bank holding company, whichever date is later.

(2) *Exceptions.* The prohibitions of this paragraph do not apply if:

(i) The Bank is located in a state that by statute expressly authorizes the acquisition of securities of, an interest in, or substantially all of the assets of, a bank within the state by an out-of-state bank holding company; or

(ii) The acquisition involves a closed or failing bank with assets of at least $500,000,000, and has been authorized under section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)).

§ 225.14 Procedures for applications, notices, and hearings.

(a) *Filing application.* An application for the Board's prior approval under this subpart shall be filed with the appropriate Reserve Bank on the designated form and shall comply with § 262.3 of the Rules of Procedure (12 CFR 262.3), which requires the applicant to publish newspaper notice of the application.

(b) *Notice*—(1) *Notice to primary banning supervisor.* Upon receipt of an application under this subpart, the Reserve Bank shall promptly furnish notice and a copy of the application to the primary banking supervisor of the bank to be acquired. The primary supervisor shall have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

(2) *Federal Register notice.* Upon receipt by the Reserve Bank of an application under this section, notice of the application shall be promptly sent to the FEDERAL REGISTER for publication. The FEDERAL REGISTER notice shall invite comment on the application for a period of no more than 30 days.

(c) *Accepting application for processing.* Within 10 business days after the Reserve Bank receives an application under this section, the Reserve Bank shall accept it for processing, request additional information to complete the application, or return the application if it is substantially incomplete. If additional information is requested, the Reserve Bank shall, within 5 business days of receipt of the requested information, either accept the application for processing or return it to the applicant if it is still incomplete. Upon accepting an application, the Reserve Bank shall immediately send copies to the Board.

(d) *Action on applications*—(1) *Action under delegated authority.* The Reserve Bank shall approve an application under this section within 30 calendar days after it has accepted the application, unless the Reserve Bank, upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate. Upon written notice to the applicant, the Reserve Bank may extend the 30-day period for 15 days. If the extension of time is to request necessary additional information, the 15-day period does not commence until after the Reserve Bank receives the requested information.

(2) *Board action.* The Board shall act on an application under this subpart that is referred to it for decision within 60 calendar days after the Reserve Bank has accepted the application, unless the Board notifies the applicant that the 60-day period is being extended for a specified period and states the reasons for the extension. In no event may the extension exceed the 91-day period provided in paragraph (g) of this section. The Board may request additional information that it believes is necessary for its decision.

(e) *Notice to Attorney General.* The Board or Reserve Bank shall immediately notify the Attorney General of approval of any application under this section.

(f) *Hearings.* As provided in section 3(b) of the Act, the Board shall order a hearing if it receives from the primary supervisor of the bank to be acquired, within the 30-day period specified in paragraph (b)(1) of this section, a written recommendation of disapproval of an application. The Board may order a formal or informal hearing or other proceeding on the application, as provided in § 262.3(i)(2) of the Board's Rules of Procedure. Any request for hearing (other than from the primary supervisor) shall comply with § 262.3(e) of the Rules of Procedure (12 CFR 262.3(e)).

(g) *Approval through failure to act*—(1) *Ninety-one day rule.* An application under this subpart shall be deemed approved if the Board fails to act on the application within 91 calendar days after the date of submission to the Board of the complete record on the application. For this purpose, the Board acts when it issues an order stating that the Board has approved or denied the application, reflecting the votes of the members of the Board, and indicating that a statement of the reasons for the decision will follow promptly.

(2) *Complete record.* For the purpose of computing the commencement of the 91-day period, the record is complete on the latest of:

(i) The date of receipt by the Board of an application that has been accepted by the Reserve Bank;

(ii) The last day provided in any notice for receipt of comments and hearing requests on the application;

(iii) The date of receipt by the Board of the last relevant material regarding the application that is needed for the Board's decision, if the material is received from a source outside of the Federal Reserve System; or

(iv) The date of completion of any hearing or other proceeding.

(h) *Exceptions to notice and hearing requirements*—(1) *Probable bank failure.* If the Board finds it must act immediately on an application in order to prevent the probable failure of a bank or bank holding company, the Board may modify or dispense with the notice and hearing requirements provided in this section.

(2) *Emergency.* If the Board finds that, although immediate action on an application is not necessary, an emergency exists requiring expeditious action, the Board shall provide the primary supervisor ten days to submit its recommendation. The Board may act on such an application without a hearing and may modify or dispense with the other notice and hearing requirements provided in this section.

(i) *Waiting period.* A transaction approved under this subpart shall not be consummated until thirty days after the date of approval of the application, unless the Board has determined under paragraph (h) of this section that:

(1) The application involves a probable bank failure, in which case the transaction may be consummated immediately upon approval; or

(2) An emergency exists requiring expeditious action, in which case the transaction may be consummated on or after the fifth calendar day following approval.

Subpart C—Nonbanking Activities and Acquisitions by Bank Holding Companies

§ 225.21 Prohibited nonbanking activities and acquisitions; exempt bank holding companies.

(a) *Prohibited nonbanking activities and acquisitions.* Except as provided in § 225.22 of this subpart, a bank holding company or a subsidiary may not engage in, or acquire or control, directly or indirectly, voting securities or assets of a company engaged in, any activity other than:

(1) Banking or managing or controlling banks and other subsidiaries authorized under the BHC Act; and

(2) An activity that the Board determines to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, including any incidental activities that are necessary to carry on such an activity, if the bank holding company has obtained the prior approval of the Board for that activity in accordance with and subject to the requirements of this regulation.

(b) *Exempt bank holding companies.* The following bank holding companies are exempt from the provisions of this subpart:

(1) *Family-owned companies.* Any company that is a "company covered in 1970," as defined in section 2(b) of the BHC Act, more than 85 percent of the voting securities of which was collectively owned on June 30, 1968, and continuously thereafter, by members of the same family (or their spouses) who are lineal descendants of common ancestors.

(2) *Labor, agricultural, and horticultural organizations.* Any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code (26 U.S.C. 501(c)).

(3) *Companies granted hardship exemption.* Any bank holding company that has controlled only one bank since before July 1, 1968, and that has been granted an exemption by the Board under section 4(d) of the BHC Act, subject to any conditions imposed by the Board.

(4) *Companies granted exemption on other grounds.* Any company that acquired control of a bank before December 10, 1982, without the Board's prior approval under section 3 of the BHC Act, on the basis of a narrow interpretation of the term "demand deposit" or "commercial loan" if the Board has determined that: (i) coverage of the company as a bank holding company under this subpart would be unfair or represent an unreasonable hardship; and (ii) exclusion of the company from coverage under this regulation is consistent with the purposes of the BHC Act and section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971, 1972(1)). The provisions of § 225.4 of Subpart A of this regulation are not applicable to a company exempt under this paragraph.

§ 225.22 Exempt nonbanking activities and acquisitions.

(a) *Servicing activities.* A bank holding company may, without the Board's prior approval under this subpart, furnish services to or perform services for, or establish or acquire a company that engages solely in furnishing services to or performing services for:

(1) The bank holding company or its subsidiaries in connection with their activities as authorized by law, including services that are necessary to fulfill commitments entered into by the subsidiaries with third parties, if the bank holding company or servicing company complies with the Board's published interpretations and does not act as principal in dealing with third parties; and

(2) The internal operations of the bank holding company or its subsidiaries. Services for the internal operations of the bank holding company or its subsidiaries include, but are not limited to:

(i) Accounting, auditing, and appraising;

(ii) Advertising and public relations;

(iii) Data processing and data transmission services, data bases or facilities;

(iv) Personnel services;

(v) Courier services;

(vi) Holding or operating property used wholly or substantially by a subsidiary in its operations or for its future use;

(vii) Liquidating property acquired from a subsidiary;

(viii) Liquidating property acquired from any sources either prior to May 9, 1956, or the date on which the company became a bank holding company, whichever is later; and

(ix) Selling, purchasing, or underwriting insurance such as blanket bond insurance, group insurance for employees, and property and casualty insurance.

(b) *Safe deposit business.* A bank holding company or nonbank subsidiary may, without the Board's prior approval, conduct a safe deposit business, or acquire voting securities of a company that conducts such a business.

(c) *Nonbanking acquisitions not requiring prior Board approval.* The Board's prior approval is not required under this subpart for the following acquisitions:

(1) *DPC acquisitions.* (i) Voting securities or assets, acquired by foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted ("DPC property") in good faith, if the DPC property is divested within two years of acquisition.

(ii) The Board may, upon request, extend this two-year period for up to three additional one-year periods. The Board may permit additional extensions for up to 5 years (for a total of 10 years), for real estate or other assets that are demonstrated by the bank holding company to have value and marketability characteristics similar to real estate.

(iii) Transfers of DPC property within the bank holding company system do not extend any period for divestiture of the property.

(2) *Securities or assets required to be divested by subsidiary.* Voting securities or assets required to be divested by a subsidiary at the request of an examining federal or state authority (except by the Board under the BHC Act or this regulation), if the bank holding company divests the securities or assets within two years from the date acquired from the subsidiary.

(3) *Fiduciary investments.* Voting securities or assets acquired by a bank or other company (other than a trust that is a company) in good faith in a fiduciary capacity, if the voting securities or assets are:

(i) Held in the ordinary course of business; and

(ii) Not acquired for the benefit of the company or its shareholders, employees, or subsidiaries.

(4) *Securities eligible for investment by a national bank.* Voting securities of the kinds and amounts explicitly eligible by federal statute (other than section 4 of the Bank Service Corporation Act, 12 U.S.C. 1864) for investment by a national bank, and voting securities acquired prior to June 30, 1971, in reliance on section 4(c)(5) of the BHC Act and interpretations of the Comptroller of the Currency under section 5136 of the Revised Statutes (12 U.S.C. 24(7)).

(5) *Securities or property representing 5 percent or less of a company.* Voting securities of a company or property that, in the aggregate, represent 5 percent or less of the outstanding shares of any class of voting securities of a company or a 5 percent interest or less in the property, subject to the provisions of 12 CFR 225.137.

(6) *Securities of investment company.* Voting securities of an investment company that is solely engaged in investing in securities and that does not own or control more than 5 percent of the outstanding shares of any class of voting securities of any company.

(7) *Assets acquired in the ordinary course of business.* Assets of a company acquired in the ordinary course of business, subject to the provisions of 12 CFR 225.132, if the assets relate to activities in which the acquiring company has previously received Board approval under this regulation to engage in the geographic areas to be served.

(8) *Asset acquisitions by consumer finance or mortgage company or industrial bank.* Assets of an office(s) of a company, all or substantially all of which relate to making, acquiring, or servicing loans for personal, family, or household purposes, if:

(i) The acquiring company has previously received Board approval under this regulation to engage in consumer finance, residential mortgage banking, or industrial banking activities in the geographic areas to be served by the acquired office(s);

(ii) The assets acquired during any twelve-month period do not represent more than 25 percent of the assets (on a consolidated basis) of the acquiring consumer finance company, mortgage company or industrial bank, or more than $25 million, whichever amount is less;

(iii) The assets acquired do not represent more than 50 percent of the selling company's consolidated assets that are devoted to the consumer finance, residential mortgage banking, or industrial banking business;

(iv) The acquiring company notifies the Reserve Bank of the acquisition within 30 days after the acquisition; and

(v) The acquiring company, after giving effect to the transaction, meets the Board's Capital Adequacy Guidelines (Appendix A to Subparts A through E) and the Board has not previously notified the acquiring company that it may not acquire assets under the exemption in this paragraph.

(d) *Acquisition of securities by subsidiary banks*—(1) *National bank.* A national bank or its subsidiary may, without the Board's approval under this subpart, acquire or retain securities on the basis of section 4(c)(5) of the BHC Act in accordance with the regulations of the Comptroller of the Currency.

(2) *State bank.* A state-chartered bank or its subsidiary may, insofar as Federal law is concerned and without the Board's prior approval under this subpart:

(i) Acquire or retain securities, on the basis of section 4(c)(5) of the BHC Act, of the kinds and amounts explicitly eligible by federal statute for investment by a national bank; or

(ii) Acquire or retain all (but, except for directors' qualifying shares, not less than all) of the securities of a company that engages solely in activities in which the parent bank may engage, at locations at which the bank may engage in the activity, and subject to the same limitations as if the bank were engaging in the activity directly.

(e) *Activities and securities of new bank holding companies.* A company that becomes a bank holding company may, for a period of two years, engage in nonbanking activities and control voting securities or assets of a nonbank subsidiary, if the bank holding company engaged in such activities or controlled such voting securities or assets on the date it became a bank holding company. The Board may grant requests for up to three one-year extensions of the two-year period.

(f) *Grandfathered activities and securities.* Unless the Board orders divestiture or termination under section 4(a)(2) of the BHC Act, a "company covered in 1970," as defined in section 2(b) of the BHC Act, may:

(1) Retain voting securities or assets and engage in activities that it has lawfully held or engaged in continuously since June 30, 1968; and

(2) Acquire voting securities of any newly-formed company to engage in such activities.

(g) *Securities or activities exempt under Regulation K.* A bank holding company may acquire voting securities or assets and engage in activities as authorized in Regulation K (12 CFR Part 211).

§ 225.23 Procedures for applications, notices, and hearings.

(a) *Application or notice required for nonbanking activities.* An application or notice for the Board's prior approval under § 225.21(a) of this subpart for the following transactions shall be filed by a bank holding company with the appropriate Reserve Bank on the designated form in accordance with the Board's Rules of Procedure (12 CFR 262.2):

(1) *Engaging de novo in listed nonbanking activities.* A notice is required to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity listed in § 225.25 of this subpart. The applicant may commence the activity 30 days after receipt by the Reserve Bank of the notice unless the Reserve Bank within the 30-day period:

(i) Returns the notice because it is incomplete or requires an application under paragraph (a) (2) or (3) of this section;

(ii) Notifies the company that it may consummate the transaction at an earlier date;

(iii) Extends the 30-day period for an additional 15 days; or

(iv) Refers the notice to the Board for decision because substantive adverse comment is received or it otherwise appears appropriate.

If the 30-day period is extended by the Reserve Bank to request necessary additional information, the 15-day period does not commence until after the Reserve Bank receives the requested information. The Reserve Bank shall promptly send a copy of any notice received under this paragraph to the Board.

(2) *Acquiring a company engaged in listed nonbanking activities.* An application is required to acquire or control voting securities or assets of a company engaged in a permissible nonbanking activity listed in § 225.25 of this subpart.

(3) *Engaging in or acquiring a company to engage in unlisted nonbanking activities.* An application is required to commence or to engage *de novo*, or to acquire or control voting securities or assets of a company engaged in, any activity not listed in § 225.25 of this subpart. The application shall contain evidence that the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

(b) *Notice to expand or alter nonbanking activities*—(1) *De novo expansion.* A notice under paragraph (a)(1) of this section is required to open a new office or to form a subsidiary to engage in, or to relocate an existing office engaged in, a nonbanking activitiy that the Board has previously approved for the bank holding company under this regulation, only if:

(i) The Board's prior approval was limited geographically;

(ii) The activity is to be conducted in a country outside of the United States and the bank holding company has not previously received prior Board approval under this regulation to engage in the activity in that country; or

(iii) The Board or appropriate Reserve Bank has notified the company that a notice under paragraph (a)(1) of this section is required.

The Board may require an application under paragraph (a)(2) or (a)(3) of this section instead of a notice.

(2) *Activities outside United States.* With respect to activities to be engaged in outside the United States that require approval under this subpart, the procedures of this section apply only to activities to be engaged in directly by a bank holding company that is not a qualifying foreign banking organization or by a nonbank subsidiary of a bank holding company approved under this subpart. Regulation K (12 CFR Part 211) governs other international operations of bank holding companies.

(3) *Alteration of nonbanking activity.* A notice under paragraph (a)(1) of this section is required to alter a nonbanking activity in any material respect from that considered by the Board in acting on the application or notice to engage in the activity. The Board may require an application under paragraph (a) (2) or (3) of this section instead of a notice.

(c) *Accepting application for processing.* Withing 10 business days after the Reserve Bank receives an application under this section, the Reserve Bank shall accept it for processing, request additional information to complete the application, or return the application to the applicant if it is substantially incomplete. If additional information is requested, the Reserve Bank shall, within 5 business days of receipt of the requested information, either accept the application for processing or return the application to the applicant if it is still incomplete. Upon accepting an application, the Reserve Bank shall immediately send copies to the Board.

(d) *Federal Register notice*—(1) *Listed activities.* Upon receipt by the Reserve Bank of an application or notice involving an activity listed in § 225.25 of this subpart, notice of the application or proposal shall be promptly sent to the FEDERAL REGIS-

TER for publication. The FEDERAL REGISTER notice shall invite comment for a period of not more than 30 days.

(2) *Unlisted activities.* In the case of an application under this section involving an activity not listed in § 225.25 of this subpart, the Board shall, within 10 business days of acceptance by the Reserve Bank, send notice of the application to the FEDERAL REGISTER for publication, unless the Board determines that the applicant has not demonstrated that the activity is so closely related to banking or to managing or controlling banks as to be a proper incident thereto. The Board may extend the 10-day period for an additional 30 calendar days upon notice to the applicant. In the event notice of an application is not published for comment, the Board shall inform the applicant of the reasons for the decision. The FEDERAL REGISTER notice shall invite comment on the proposal for a reasonable period of time, generally for 30 days.

(e) *Action on applications*—(1) *Action under delegated authority.* The Reserve Bank shall approve an application under paragraph (a)(2) of this section within 30 calendar days after it has accepted the application, unless the Reserve Bank, upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate. Upon written notice to the applicant, the Reserve Bank may extend the 30-day period for 15 days. If the extension of time is to request necessary additional information, the 15-day period does not commence until the Reserve Bank receives the requested information.

(2) *Board action.* The Board shall act on an application or notice under this section that is referred to it for decision within 60 calendar days after the Reserve Bank has accepted the application or received the notice, unless the Board notifies the applicant that the 60-day period is being extended for a specified period and explains the reasons for the extension. In no event may the extension exceed the 91-day period specified in paragraph (h) of this section. The Board may request additional information that it believes is necessary for its decision.

(f) *Expedited procedure for small acquisitions*—(1) *Filing notice.* As an alternative to the application procedure of paragraph (a)(2) of this section, a bank holding company may apply to acquire voting securities or assets of a company engaged in an activity listed in § 225.25 of this subpart by:

(i) Providing the appropriate Reserve Bank with a description of the transaction; and either

(ii) Submitting a copy of a newspaper notice in the form prescribed by the Board; or

(iii) Requesting the Board to publish notice of the application in the FEDERAL REGISTER. The newspaper notice shall be published in a newspaper of general circulation in the areas to be served as a result of the acquisition and shall provide an opportunity for interested persons to comment on the application for a period of at least 10 calendar days. If the applicant elects FEDERAL REGISTER notice, the notice shall provide an opportunity for interested persons to comment for a period of at least 15 calendar days.

(2) *Criteria for use of expedited procedure.* The procedure in this paragraph is available only if:

(i) Neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds $15 million;

(ii) The bank holding company has previously received Board approval to engage in the activity involved in the acquisition; and

(iii) The bank holding company meets the Board's Capital Adequacy Guidelines (Appendix A to Subparts A through E).

(3) *Action on application.* Within 5 business days after the close of the comment period specified in the FEDERAL REGISTER notice or within 15 calendar days after receipt by the Reserve Bank of the newspaper notice, the Reserve Bank shall either approve the application or refer it to the Board for decision if action under delegated authority is not appropriate. The Board shall act on an application under this paragraph that is referred to it for decision in accordance with paragraph (e)(2) of this section. The Reserve Bank, upon written notice to the applicant, may extend the time

period for approval under this paragraph for a reasonable period of time not to exceed 30 days. The Reserve Bank or the Board may require an application under paragraph (a)(2) of this section.

(g) *Hearing.* Any request for a hearing on an application or notice under this section shall comply with the provisions of § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)). The Board may order a formal or informal hearing or other proceeding on an application, as provided in § 262.3(i)(2) of the Rules of Procedure (12 CFR 262.3(i)(2)). The Board shall order a hearing only if there are disputed issues of material fact that cannot be resolved in some other manner.

(h) *Approval through failure to act; 91-day rule.* An application or notice under this subpart shall be deemed approved if the Board fails to act on the application or notice within 91 calendar days after the date of submission to the Board of the complete record on the application or notice. The procedures for computation of the 91-day rule as set forth in § 225.14(g) of Subpart B of this regulation apply to applications and notices under this subpart.

(i) *Emergency thrift institution acquisitions.* In the case of an application to acquire a thrift institution, the Board may modify or dispense with the notice and hearing requirements of this section if the Board finds that an emergency exists that requires the Board to act immediately and the primary Federal regulator of the institution concurs.

§ 225.24 Factors considered in acting on nonbanking applications.

In evaluating an application or notice under § 225.23 of this subpart, the Board shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, the gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, and unsound banking practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and any company to be acquired, and the effect of the proposed transaction on those resources. Unless the record demonstrates otherwise, the commencement or expansion of a nonbanking activity *de novo* is presumed to result in benefits to the public through increased competition.

§ 225.25 List of permissible nonbanking activities.

(a) *Closely related nonbanking activities.* The activities listed below are so closely related to banking or managing or controlling banks as to be a proper incident thereto and may be engaged in by a bank holding company or a subsidiary thereof in accordance with and subject to the requirements of this regulation.

(b)(1) *Making and servicing loans.* Making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made, for example, by the following types of companies:

(i) Consumer finance;

(ii) Credit card;

(iii) Mortgage;

(iv) Commercial finance; and

(v) Factoring.

(2) *Industrial banking.* Operating an industrial bank, Morris Plan bank, or industrial loan company, as authorized under state law, so long as the institution is not a bank.

(3) *Trust company functions.* Performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law, so long as the institution is not a bank and does not make loans or investments or accept deposits other than:

(i) Deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law;

(ii) Deposits representing funds received for a special use in the capacity of managing agent or custodian for an owner of, or investor in, real property, securities, or other personal property; or for such owner or investor as agent or custodian of funds held for investment or as escrow agent; or for an issuer of, or broker or dealer in securities, in a capacity such as a paying agent, dividend disbursing agent, or securities clearing agent; provided such deposits are not employed by or for the account of the customer in the manner of a general purpose checking account or interest-bearing account; or

(iii) Making call loans to securities dealers or purchasing money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances. (Such authorized loans and investments, however, may not be used as a method of channeling funds to nonbanking affiliates of the trust company.)

(4) *Investment or financial advice.* Acting as investment or financial adviser to the extent of:

(i) Serving as the advisory company for a mortgage or a real estate investment trust;

(ii) Serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company;

(iii) Providing portfolio investment advice[1] to any other person;

(iv) Furnishing general economic information and advice, general economic statistical forecasting services and industry studies;[2] and

(v) Providing financial advice to state and local governments, such as with respect to the issuance of their securities.

(5) *Leasing personal or real property.* Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if:

(i) The lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(ii) The property to be leased is acquired specifically for the leasing transaction under consideration or was acquired specifically for an earlier leasing transaction;

(iii) The lease is on a nonoperating basis;[3]

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[1] The term "portfolio investment" is intended to refer generally to the investment of funds in a "security" as defined in section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b) or in real property interests, except where the real property is to be used in the trade or business of the person being advised. In furnishing portfolio investment advice, bank holding companies and their subsidiaries shall observe the standards of care and conduct applicable to fiduciaries.

[2] This is to be contrasted with "management consulting," which the Board views as including, but not limited to, the provision of analysis or advice as to a firm's (A) purchasing operations, such as inventory control, sources of supply, and cost minimization subject to constraints; (B) production operations, such as quality control, work measurement, product methods, scheduling shifts, time and motion studies, and safety standards; (C) marketing operations, such as market testing, advertising programs, market development, packaging, and brand development; (D) planning operations, such as demand and cost projections, plant location, program planning, corporate acquisitions and mergers, and determination of long-term and short-term goals; (E) personnel operations, such as recruitment, training, incentive programs, employee compensation, and management-personnel relations; (F) internal operations, such as taxes, corporate organization, budgeting systems, budget control, data processing systems evaluation, and efficiency evaluation; or (G) research operations, such as product development, basic research, and product design and innovation. The Board has determined that "management consulting" is not an activity that is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

[3] For purposes of the leasing of automobiles, the requirement that the lease be on a nonoperating basis means that the bank holding company may not, directly or indirectly: (A) provide for the servicing, repair, or maintenance of the leased vehicle during the lease term; (B) purchase parts and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; (C) provide for the loan of an automobile during servicing of the leased vehicle; (D) purchase insurance for the lessee; or (E) provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor.

(iv) At the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transactions[4]) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease,[5] from:

(A) Rentals;

(B) Estimated tax benefits (investment tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect);

(C) The estimated residual value of the property at the expiration of the initial term of the lease, which in no case shall exceed 20 percent of the acquisition cost of the property to the lessor; and

(D) In the case of a lease of personal property of not more than seven years in duration, such additional amount, which shall not exceed 60 percent of the acquisition cost of the property, as may be provided by an unconditional guarantee by a lessee, independent third party, or manufacturer, which has been determined by the lessor to have the financial resources to meet such obligation, that will assure the lessor of recovery of its investment and cost of financing;

(v) The maximum lease term during which the lessor must recover the lessor's full investment in the property, plus the estimated total cost of financing the property, shall be 40 years; and

(vi) At the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or released on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease;[6] however, in no case shall the lessor retain any interest in the property beyond 50 years after its acquisition of the property.

(6) *Community development.* Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents.

(7) *Data processing.* Providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means, if:

(i) The data to be processed or furnished are financial, banking, or economic, and the services are provided pursuant to a written agreement so describing and limiting the services;

(ii) The facilities are designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and

(iii) The hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

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[4] The Board understands that some Federal, state and local governmental entities may not enter into a lease for a period in excess of one year. Such an impediment does not prohibit a company authorized to conduct leasing activities under this paragraph from entering into a lease with such governmental entities if the company reasonably anticipates that the governmental entities will renew the lease annually until such time as the company is fully compensated for its investment in the leased property plus its costs of financing the property. Further, a company authorized to conduct personal property leasing activities under this paragraph may also engage in so-called "bridge" lease financing of personal property, but not real property, if the lease is short-term pending completion of long-term financing, by the same or another lender.

[5] The estimate by the lessor of the total cost of financing the property over the term of the lease should reflect, among other factors: the term of the lease, the modes of financing available to the lessor, the credit rating of the lessor and/or the lessee, if a factor in the financing, and prevailing rates in the money and capital markets.

[6] In the event of a default on a lease agreement prior to the expiration of the lease term, the lessor shall either release the property, subject to all the conditions of this paragraph, or liquidate the property as soon as practicable but in no event later than two years from the date of default on a lease agreement or such additional time as the Board may permit under § 225.22(c)(1) of this regulation, as if the property were DPC property.

(8) *Insurance sales.* Except as prohibited in Title VI of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1843(c)(8)), acting as insurance agent or broker in offices at which the holding company or its subsidiaries are otherwise engaged in business (or in an office adjacent thereto) with respect to the following types of insurance:

(i) Any insurance that (A) is directly related to an extension of credit by a bank or bank-related firm of the kind described in this regulation, or (B) is directly related to the provision of other financial services by a bank or such a bank-related firm; and

(ii) Any insurance sold by a bank holding company or a nonbanking subsidiary in a community that has a population not exceeding 5,000 (as shown by the last preceding decennial census), if the principal place of banking business of the bank holding company is located in a community having a population not exceeding 5,000.

(9) *Underwriting Credit Life, Accident and Health Insurance.* Acting as underwriter for credit life insurance and credit accident and health insurance that is directly related to an extension of credit by the bank holding company system.[7]

(10) *Courier services.* Providing courier services for:

(i) Checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions; and

(ii) Audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.[8]

(11) *Management consulting to depository institutions.* Providing management consulting advice [9] to nonaffiliated bank and nonbank depository institutions, including commercial banks, savings and loan associations, mutual savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, and industrial loan companies, if:

(i) Neither the bank holding company nor any of its subsidiaries own or control, directly or indirectly, any equity securities in the client institution;

(ii) No management official, as defined in 12 CFR 212.2(h), of the bank holding company or any of its subsidiaries serves as a management official of the client institution, except where such interlocking relationships are permitted pursuant to an exemption granted under 12 CFR 212.4(b);

(iii) The advice is rendered on an explicit fee basis without regard to correspondent balances maintained by the client institution at any depository institution subsidiary of the bank holding company; and

(iv) Disclosure is made to each potential client institution of (A) the names of all depository institutions that are affiliates of the consulting company, and (B) the names of all existing client institutions located in the same county(ies), Metropolitan Statistical Area, or Primary Metropolitan

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[7] To assure that engaging in the underwriting of credit life and credit accident and health insurance can reasonably be expected to be in the public interest, the Board will only approve applications in which an applicant demonstrates that approval will benefit the consumer or result in other public benefits. Normally such a showing would be made by a projected reduction in rates or increase in policy benefits due to bank holding company performance of this service.

[8] See also the Board's interpretation on courier activities (12 CFR 225.129), which sets forth conditions for bank holding company entry into the activity.

[9] A bank holding company that has received the Board's prior approval to engage in offering management consulting advice to nonaffiliated commercial banks as of April 20, 1982, may offer such advice on a *de novo* basis to nonbank depository institutions pursuant to this paragraph without filing an application under § 225.23 of this subpart.

Statistical Area as the client institution.[10]

(12) *Money orders, savings bonds, and travelers checks.* The issuance and sale at retail of money orders and similar consumer-type payment instruments having a face value of not more than $1,000; the sale of U.S. savings bonds; and the issuance and sale of travelers checks.

(13) *Real estate appraising.* Performing appraisals of real estate.

(14) *Arranging commercial real estate equity financing.* Acting as intermediary for the financing of commercial or industrial income-producing real estate by arranging for the transfer of the title, control and risk of such a real estate project to one or more investors, if:

(i) The financing arranged exceeds $1 million;

(ii) The bank holding company and its affiliates do not provide financing to the investors to acquire a real estate project for which the bank holding company arranges equity financing;

(iii) The bank holding company and its affiliates do not have an interest in or participate in managing, developing or syndicating a real estate project for which it arranges equity financing, and do not promote or sponsor the development or syndication of such property; and

(iv) The fee received for arranging equity financing for a real estate project is not based on profits to be derived from the project and is not larger than the fee that would be charged by an unaffiliated intermediary.

(15) *Securities brokerage.* Providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T (12 CFR Part 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, if the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting or dealing or investment advice or research services.

(16) *Underwriting and dealing in government obligations and money market instruments.* Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including bankers' acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by the bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks.

(17) *Foreign exchange advisory and transactional services.* Providing, by any means, general information and statistical forecasting with respect to foreign exchange markets; advisory services designed to assist customers in monitoring, evaluating and managing their foreign exchange exposures; and transactional services with respect to foreign exchange by arranging for "swaps" among customers with complementary foreign exchange exposures and for the execution of foreign exchange transactions; provided the activity is conducted through a separately incorporated subsidiary of the bank holding company that:

(i) Does not take positions in foreign exchange for its own account;

(ii) Observes the standards of care and conduct applicable to fiduciaries with respect to its foreign exchange advisory and transactional services; and

(iii) Does not itself execute foreign exchange transactions.

(18) *Futures commission merchant.* Acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures con-

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[10] In performing this activity, bank holding companies are not authorized to perform tasks or operations or provide services to client institutions either on a daily or continuing basis, except as necessary to instruct the client institution on how to perform such services for itself. See also the Board's interpretation of bank management consulting advice (12 CFR 225.131). This interpretation shall apply to the performance of management consulting services for commercial banks and any other type of depository institution.

tracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account, if the activity is conducted through a separately incorporated subsidiary of the bank holding company that:

(i) Does not become a clearing member of any exchange or clearing association that requires the parent corporation of the clearing member to also become a member of that exchange or clearing association unless a waiver of the requirement is obtained;

(ii) Does not trade for its own account except for the purpose of hedging a cash position in the related government security, bullion, foreign currency, or money market instrument;

(iii) Time stamps orders of all customers to the nearest minute, executes all orders strictly in chronological sequence to the extent consistent with the customers' specifications, and executes all orders with reasonable promptness with due regard to market conditions;

(iv) Does not extend credit to customers for the purpose of meeting initial or maintenance margins required of customers except for posting margin on behalf of customers in advance of prompt reimbursement; and

(v) Has and maintains capitalization fully adequate to meet its own commitments and those of its customers, including affiliates.

Subpart D—Control and Divestiture Proceedings

§ 225.31 Control proceedings.

(a) *Preliminary determination of control.* (1) The Board may issue a preliminary determination of control under the procedures set forth in this section in any case in which:

(i) Any of the presumptions of control set forth in paragraph (d) of this section is present; or

(ii) It otherwise appears that a company has the power to exercise a controlling influence over the management or policies of a bank or other company.

(2) If the Board makes a preliminary determination of control under this section, the Board shall send notice to the controlling company containing a statement of the facts upon which the preliminary determination is based.

(b) *Response to preliminary determination of control.* Within 30 calendar days of issuance by the Board of a preliminary determination of control or such longer period permitted by the Board, the company against whom the determination has been made shall:

(1) Submit for the Board's approval a specific plan for the prompt termination of the control relationship;

(2) File an application under Subpart B or C of this regulation to retain the control relationship; or

(3) Contest the preliminary determination by filing a response, setting forth the facts and circumstances in support of its position that no control exists, and, if desired, requesting a hearing or other proceeding.

(c) *Hearing and final determination.* (1) The Board shall order a formal hearing or other appropriate proceeding upon the request of a company that contests a preliminary determination that the company has the power to exercise a controlling influence over the management or policies of a bank or other company, if the Board finds that material facts are in dispute. The Board may also in its discretion order a formal hearing or other proceeding with respect to a preliminary determination that the company controls voting securities of the bank or other company under the presumptions in paragraph (d)(1) of this section.

(2) At a hearing or other proceeding, any applicable presumptions established by paragraph (d) of this section shall be considered in accordance with the Federal Rules of Evidence and the Board's Rules of Practice for Formal Hearings (12 CFR Part 263).

(3) After considering the submissions of the company and other evidence, including the record of any hearing or other proceeding, the Board shall issue a final order determining whether the company controls voting securities, or has the power to exercise a controlling influence over the management or policies, of the bank or other company. If a control relationship is found, the Board may direct the company to terminate the

control relationship or to file an application for the Board's approval to retain the control relationship under Subpart B or C of this regulation.

(d) *Rebuttable presumptions of control.* The following rebuttable presumptions shall be used in any proceeding under this section:

(1) *Control of voting securities*—(i) *Securities convertible into voting securities.* A company that owns, controls, or holds securities that are immediately convertible, at the option of the holder or owner, into voting securities of a bank or other company, controls the voting securities.

(ii) *Option or restriction on voting securities.* A company that enters into an agreement or understanding under which the rights of a holder of voting securities of a bank or other company are restricted in any manner controls the securities. This presumption does not apply where the agreement or understanding:

(A) is a mutual agreement among shareholders granting to each other a right of first refusal with respect to their shares;

(B) Is incident to a *bona fide* loan transaction; or

(C) Relates to restrictions on transferability and continues only for the time necessary to obtain approval from the appropriate Federal supervisory authority with respect to acquisition by the company of the securities.

(2) *Control over company*—(i) *Management agreement.* A company that enters into any agreement or understanding with a bank or other company (other than an investment advisory agreement), such as a management contract, under which the first company or any of its subsidiaries directs or exercises significant influence over the general management or overall operations of the bank or other company controls the bank or other company.

(ii) *Shares controlled by company and associated individuals.* A company that, together with its management officials or principal shareholders (including members of the immediate families of either as defined in 12 CFR 206.2(k)), owns, controls, or holds with power to vote 25 percent or more of the outstanding shares of any class of voting securities of a bank or other company controls the bank or other company, if the first company owns, controls, or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the bank or other company.

(iii) *Common management officials.* A company that has one or more management officials in common with a bank or other company controls the bank or other company, if the first company owns, controls or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the bank or other company, and no other person controls as much as 5 percent of the outstanding shares of any class of voting securities of the bank or other company.

(iv) *Shares held as fiduciary.* The presumptions in paragraphs (d)(2) (ii) and (iii) of this section do not apply if the securities are held by the company in a fiduciary capacity without sole discretionary authority to exercise the voting rights.

(e) *Presumption of non-control*—(1) In any proceeding under this section, there is a presumption that any company that directly or indirectly owns, controls, or has power to vote less than 5 percent of the outstanding shares of any class of voting securities of a bank or other company does not have control over that bank or other company.

(2) In any proceeding under this section, or judicial proceeding under the BHC Act, other than a proceeding in which the Board has made a preliminary determination that a company has the power to exercise a controlling influence over the management or policies of the bank or other company, a company may not be held to have had control over the bank or other company at any given time, unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 percent or more of the outstanding shares of any class of voting securities of the bank or other company, or had already been found to have control on the basis of the existence of a controlling influence relationship.

§ 225.32 Divestiture proceedings.

(a) *Ineffective divestitures.* (1) The divestiture of assets or voting securities by a bank holding company (or a company that would be a bank holding company but for the divestiture) is ineffective, and the divesting company shall be presumed to control the acquiring person or the divested assets or securities, if:

(i) The acquiring person is indebted in any manner to the divesting company; or

(ii) The divesting company has any management official in common with the acquiring person.

(2) For the purposes of this section:

(i) "Indebtedness" does not include routine business or personal credit that is unrelated to the divestiture transaction and that is extended by the divesting company in the ordinary course of its lending business; and

(ii) "Divesting company" and "acquiring person" include their parent companies, subsidiaries, and, if the acquiring person is an individual, companies controlled by the individual.

(b) *Request for divestiture determination.* For any divestiture that is deemed ineffective under paragraph (a) of this section, the divesting company may request the Board to determine that the divestiture is in fact effective by submitting a letter that includes:

(1) A description of the divestiture transaction and the existing and prospective relationship between the divesting company and the acquiring person;

(2) Evidence and argument demonstrating that the divesting company is not capable of controlling the acquiring person or the divested assets or securities; and

(3) A request for a hearing, if desired.

(c) *Hearing.* The Board shall order a formal hearing or other appropriate proceeding upon the request of a divesting company under paragraph (b) of this section, if the Board finds that material facts are in dispute. The Board may also order a formal hearing or other proceeding if, in the Board's judgment, such a proceeding would be appropriate.

(d) *Standards for making divestiture determination.* In acting on the request of a divesting company under paragraph (b) of this section, the Board shall consider the following factors, among others, in determining whether the divesting company is capable of controlling the acquiring person or the divested assets or securities:

(1) *Indebtedness of acquiring person to divesting company.* (i) The terms of the indebtedness, including the amount of the indebtedness in relation to the total purchase price;

(ii) The ability of the acquiring person to repay the indebtedness; and

(iii) The manner in which the divesting company would dispose of the divested assets in the event it reacquires the assets as a result of default on the indebtedness.

(2) *Management official interlocks.* The extent of the involvement of the interlocking management official in the operations of the divesting company and the acquiring person, and the management official's relationship to the assets or securities being divested.

(e) *Final determination.* After considering the submission of the divesting company and other evidence, including the record of any hearing or other proceeding, the Board shall issue an order determining whether the company controls or is capable of controlling the acquiring person or the divested assets or securities.

(f) *Review of other divestitures.* In any divestiture of assets or securities by a company that is not covered under paragraph (a) of his section, the Board may review the divestiture to assure that the divesting company is not capable of controlling the acquiring person or the divested assets or securities.

Subpart E—Change in Bank Control

§ 225.41 Transactions requiring prior notice.

(a) *Prior notice requirement.* (1) Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the Board 60 days' written notice, as specified in § 225.43 of this subpart, before acquiring control of a state member bank or bank holding company, unless the acquisition is exempt under § 225.42 of this subpart.

(2) For the purposes of this subpart, "acquisition" includes a purchase, assignment, transfer, or pledge of voting securities, or an increase in percentage ownership of a bank or other company resulting from a redemption of voting securities.

(b) *Acquisitions requiring prior notice.* The following transactions constitute, or are presumed to constitute, the acquisition of control under the Bank Control Act, requiring prior notice to the Board:

(1) The acquisition of any voting securities of a state member bank or bank holding company if, after the transaction, the acquiring person (or persons acting in concert) owns, controls, or holds with power to vote 25 percent or more of any class of voting securities of the institution; or

(2) The acquisition of any voting securities of a state member bank or bank holding company if, after the transaction, the acquiring person (or persons acting in concert) owns, controls, or holds with power to vote 10 percent or more (but less than 25 percent) of any class of voting securities of the institution, and if:

(i) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*); or

(ii) No other person will own a greater percentage of that class of voting securities immediately after the transaction.

(c) *Rebuttal of presumption of control.* Prior notice to the Board is not required for any acquisition of voting securities under the presumption set forth in paragraph (b)(2) of this section, if the Board finds that the acquisition will not result in control. The Board will afford the person seeking to rebut the presumption an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal conference.

(d) *Other transactions.* Transactions other than those set forth in paragraph (b)(2) resulting in a person's control of less than 25 percent of a class of voting securities of a state member bank or bank holding company do not result in control for purposes of the Bank Control Act.

§ 225.42 Transactions not requiring prior notice.

The following transactions do not require prior notice to the Board under this subpart:

(a) *Increase of previously authorized acquisitions.* The acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person who has lawfully acquired and maintained control of 25 percent or more of that class of voting securities after filing the notice required under § 225.41(b)(1) of this subpart.

(b) *Acquisitions subject to approval under BHC Act or Bank Merger Act.* Any acquisition of voting securities subject to approval under section 3 of the BHC Act (§ 225.11 of Subpart B), or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c)).

(c) *Transactions exempt under BHC Act.* Any acquisition described in sections 2(a)(5) or 3(a) (A) or (B) of the BHC Act (12 U.S.C. 1841(a)(5), 1842(a) (A) and (B)) by a person described in those provisions.

(d) *Grandfathered control relationships.* (1) The acquisition of additional voting securities of a state member bank or bank holding company by a person who continuously since March 9, 1979 (or since that institution commenced business, if later) held power to vote 25 percent or more of any class of voting securities of that institution; or

(2) The acquisition of additional voting securities of a state member bank or bank holding company by a person who is presumed under § 225.41(b)(2) of this subpart to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting securities held does not exceed 25 percent of any class of voting securities of the institution.

(e) *Acquisitions in satisfaction of debts previously contracted or through inheritance or gift.* Any acquisition of voting securities, which would otherwise require a notice under this subpart, in satisfaction of a debt previously contracted in good faith, or through inheritance or a *bona fide* gift, if the acquiring person notifies the appropriate Reserve Bank within 30 calendar days after the acquisition and provides any relevant information requested by the Reserve Bank.

(f) *Proxy solicitation.* The acquisition of the power to vote securities of a state member bank or bank holding company through receipt of a revocable proxy in connection with a proxy solicitation for the purpose of conducting business at a regular or special meeting of the institution, if the proxy terminates within a reasonable period after the meeting.

(g) *Stock dividends.* The receipt of voting securities of a state member bank or bank holding company through a stock dividend or stock split if the proportional interest of the recipient in the institution remains substantially the same.

(h) *Acquisition of foreign banking organization.* The acquisition of voting securities of a qualifying foreign banking organization. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Bank Control Act (12 U.S.C. 1817(j) (9), (10), and (12)).)

§ 225.43 Procedures for filing, processing, and acting on notices.

(a) *Filing notice.* A notice required under this subpart shall be filed with the appropriate Reserve Bank and shall contain the information required by paragraph 6 of the Bank Control Act (12 U.S.C. 1817(j)(6)), or prescribed in the designated Board form. With respect to personal financial statements required by paragraph 5(B) of the Bank Control Act, an individual may include a statement of assets and liabilities as of a date within 90 days of filing the notice, a brief income summary, and a description of any subsequent material changes, subject to the authority of the Reserve Bank or the Board to require additional information.

(b) *Advice to bank supervisory agencies*—(1) Upon accepting a notice relating to acquisition of securities of a state member bank, the Reserve Bank shall send a copy of the notice to the appropriate state bank supervisor, which shall have 30 calendar days from the date the notice is sent in which to submit its views and recommendations to the Board. The Reserve Bank shall also send a copy of any notice it accepts to the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

(2) If the Board finds that it must act immediately in order to prevent the probable failure of the bank or bank holding company involved, the Board may dispense with or modify the requirements for notice to the state supervisor.

(c) *Time period for Board action*—(1) *Consummation of acquisition.* (i) A proposed acquisition may be consummated 60 days after submission to the Reserve Bank of a complete notice under paragraph (a) of this section, unless within that period the Board disapproves the proposed acquisition or extends the 60-day period as provided under paragraph (c)(2) of this section.

(ii) A proposed acquisition for which notice has been filed under paragraph (a) of this section may be consummated before the expiration of the 60-day period if the Board notifies the acquiring person in writing of the Board's intention not to disapprove the acquisition.

(2) *Extensions of time period.* (i) The Board may extend the 60-day period in paragraph (c)(1) of this section for an additional 30 days by notifying the acquiring person.

(ii) The Board may further extend the period for disapproval or return the notice, if the Board finds that the acquiring person has not furnished all the information required under paragraph (a) of this section or has submitted material information that is substantially inaccurate. If the Board so extends the time period, it shall notify the acquiring person of the information that is incomplete or inaccurate.

(d) *Investigation of notice.* In investigating any notice accepted under this subpart, the Board or Reserve Bank may solicit information or views from any person (including any bank or bank holding company involved in the notice, and any appropriate state, federal or foreign governmental authority). No person (other than the acquiring person), whose views are solicited or who presents information, thereby becomes a party to the proceeding or acquires any standing or right to participate in the Board's consideration of the notice.

(e) *Factors considered in acting on notices.* In reviewing a notice filed under this subpart, the Board shall consider the information in the record, the views and recommendations of the appropriate bank supervisor, and any other relevant information obtained during any investigation of the notice. The Board may disapprove an acquisition if it finds adverse effects with respect to any of the factors set forth in paragraph 7 of the Bank Control Act (12 U.S.C. 1817(j)(7)) (*i.e.*, competitive, financial, managerial, banking or incompleteness of information).

(f) *Disapproval and hearing.* Within three days after its decision to issue a notice of intent to disapprove any proposed acquisition, the Board shall notify the acquiring person in writing of the reasons for the action. Within 10 calendar days of receipt of the notice of the Board's intent to disapprove, the acquiring person may submit a written request for a hearing. Any hearing conducted under this paragraph shall be in accordance with the Rules of Practice for Formal Hearings (12 CFR Part 263). At the conclusion of the hearing, the Board shall, by order, approve or disapprove the proposed acquisition on the basis of the record of the hearing. If the acquiring person does not request a hearing, the notice of intent to disapprove becomes final and unappealable.

APPENDICES TO SUBPARTS A THROUGH E

APPENDIX A—CAPITAL ADEQUACY GUIDELINES FOR BANK HOLDING COMPANIES AND STATE MEMBER BANKS

The Board of Governors of the Federal Reserve System has adopted minimum capital ratios and guidelines to provide a framework for assessing the adequacy of the capital of bank holding companies and state member banks (collectively "banking organizations"). The guidelines generally apply to all state member banks and bank holding companies regardless of size and are to be used in the examination and supervisory process as well as in the analysis of applications acted upon by the Federal Reserve. The Board of Governors will review the guidelines from time to time for possible adjustment commensurate with changes in the economy, financial markets, and banking practices.

Two principal measurements of capital are used—the primary capital ratio and the total capital ratio. The definitions of primary and total capital for banks and bank holding companies and formulas for calculating the capital ratios are set forth below in the definitional sections of these guidelines.

CAPITAL GUIDELINES

The Board has established a minimum level of primary capital to total assets of 5.5 percent and a minimum level of total capital to total assets of 6.0 percent. Generally, banking organizations are expected to operate above the minimum primary and total capital levels. Those organizations whose operations involve or are exposed to high or inordinate degrees of risk will be expected to hold additional capital to compensate for these risks.

In addition, the Board has established the following three zones for total capital for banking organizations of all sizes:

TOTAL CAPITAL RATIO

[In percent]

Zone 1	Above 7.0.
Zone 2	6.0 to 7.0.
Zone 3	Below 6.0.

The capital guidelines assume adequate liquidity and a moderate amount of risk in the loan and investment portfolios and in off-balance sheet activities. The Board is concerned that some banking organizations may attempt to comply with the guidelines in ways that reduce their liquidity or increase risk. Banking organizations should avoid the practice of attempting to meet the guidelines by decreasing the level of liquid assets in relation to total assets. In assessing compliance with the guidelines, the Federal Reserve will take into account liquidity and the overall degree of risk associated with an organization's operations, including the volume of assets exposed to risk.

The Federal Reserve will also take into account the sale of loans or other assets with recourse and the volume and nature of all off-balance sheet risk. Particularly close attention will be directed to risks associated with standby letters of credit and participation in joint venture activities. The Federal

Reserve will review the relationship of all on- and off-balance sheet risks to capital and will require those institutions with high or inordinate levels of risk to hold additional primary capital. In addition, the Federal Reserve will continue to review the need for more explicit procedures for factoring on- and off-balance sheet risks into the assessment of capital adequacy.

The capital guidelines apply to both banks and bank holding companies on a consolidated basis.[1] Some banking organizations are engaged in significant nonbanking activities that typically require capital ratios higher than those of commercial banks alone. The Board believes that, as a matter of both safety and soundness and competitive equity, the degree of leverage common in banking should not automatically extend to nonbanking activities. Consequently, in evaluating the consolidated capital positions of banking organizations, the Board is placing greater weight on the building-block approach for assessing capital requirements. This approach generally provides that nonbank subsidiaries of a banking organization should maintain levels of capital consistent with the levels that have been established by industry norms or standards, by Federal or State regulatory agencies for similar firms that are not affiliated with banking organizations, or that may be established by the Board after taking into account risk factors of a particular industry. The assessment of an organization's consolidated capital adequacy must take into account the amount and nature of all nonbank activities, and an institution's consolidated capital position should at least equal the sum of the capital requirements of the organization's bank and nonbank subsidiaries as well as those of the parent company.

SUPERVISORY ACTION

The nature and intensity of supervisory action will be determined by an organization's compliance with the required minimum primary capital ratio as well as by the zone in which the company's total capital ratio falls. Banks and bank holding companies with primary capital ratios below the 5.5 percent minimum will be considered undercapitalized unless they can demonstrate clear extenuating circumstances. Such banking organizations will be required to submit an acceptable plan for achieving compliance with the capital guidelines and will be subject to denial of applications and appropriate supervisory enforcement actions.

The zone in which an organization's total capital ratio falls will normally trigger the following supervisory responses, subject to qualitative analysis:

For institutions operating in Zone 1, the Federal Reserve will:

—Consider that capital is generally adequate if the primary capital ratio is acceptable to the Federal Reserve and is above the 5.5 percent minimum.

For institutions operating in Zone 2, the Federal Reserve will:

—Pay particular attention to financial factors, such as asset quality, liquidity, off-balance sheet risk, and interest rate risk, as they relate to the adequacy of capital. If these areas are deficient and the Federal Reserve concludes capital is not fully adequate, the Federal Reserve will intensify its monitoring and take appropriate supervisory action.

For institutions operating in Zone 3, the Federal Reserve will:

—Consider that the institution is undercapitalized, absent clear extenuating circumstances;

—Require the institution to submit a comprehensive capital plan, acceptable to the Federal Reserve, that includes a program for achieving compliance with the required minimum ratios within a reasonable time period; and

—Institute appropriate supervisory and/or administrative enforcement action, which may include the issuance of a capital directive or denial of applications, unless a capital plan acceptable to the Federal Reserve has been adopted by the institution.

TREATMENT OF INTANGIBLE ASSETS FOR THE PURPOSE OF ASSESSING THE CAPITAL ADEQUACY OF BANK HOLDING COMPANIES AND STATE MEMBER BANKS

In considering the treatment of intangible assets for the purpose of assessing capital adequacy, the Federal Reserve recognizes that the determination of the future benefits and useful lives of certain intangible assets may involve a degree of uncertainty that is not normally associated with other banking assets. Supervisory concern over intangible assets derives from this uncertainty and from the possibility that, in the event an organization experiences financial difficulties, such assets may not provide the degree of support generally associated with other assets. For this reason, the Federal Reserve will carefully review the level and specific character of intangible assets in evaluating the capital adequacy of state member banks and bank holding companies.

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[1] The guidelines will apply to bank holding companies with less than $150 million in consolidated assets on a bank-only basis unless (1) the holding company or any nonbank subsidiary is engaged directly or indirectly in any nonbank activity involving significant leverage or (2) the holding company or any nonbank subsidiary has outstanding significant debt held by the general public. Debt held by the general public is defined to mean debt held by parties other than financial institutions, officers, directors, and principal shareholders of the banking organization or their related interests.

The Federal Reserve recognizes that intangible assets may differ with respect to predictability of any income stream directly associated with a particular asset, the existence of a market for the asset, the ability to sell the asset, or the reliability of any estimate of the asset's useful life. Certain intangible assets have predictable income streams and objectively verifiable values and may contribute to an organization's profitability and overall financial strength. The value of other intangibles, such as goodwill, may involve a number of assumptions and may be more subject to changes in general economic circumstances or to changes in an individual institution's future prospects. Consequently, the value of such intangible assets may be difficult to ascertain. Consistent with prudent banking practices and the principle of the diversification of risks, banking organizations should avoid excessive balance sheet concentration in any category or related categories of intangible assets.

Bank Holding Companies

While the Federal Reserve will consider the amount and nature of all intangible assets, those holding companies with aggregate intangible assets in excess of 25 percent of tangible primary capital (i.e., stated primary capital less all intangible assets) or those institutions with lesser, although still significant, amounts of goodwill will be subject to close scrutiny. For the purpose of assessing capital adequacy, the Federal Reserve may, on a case-by-case basis, make adjustments to an organization's capital ratios based upon the amount of intangible assets in excess of the 25 percent threshold level or upon the specific character of the organization's intangible assets in relation to its overall financial condition. Such adjustments may require some organizations to raise additional capital.

The Board expects banking organizations (including state member banks) contemplating expansion proposals to ensure that pro forma capital ratios exceed the minimum capital levels without significant reliance on intangibles, particularly goodwill. Consequently, in reviewing acquisition proposals, the Board will take into consideration both the stated primary capital ratio (that is, the ratio without any adjustment for intangible assets) and the primary capital ratio after deducting intangibles. In acting on applications, the Board will take into account the nature and amount of intangible assets and will, as appropriate, adjust capital ratios to include certain intangible assets on a case-by-case basis.

State Member Banks

State member banks with intangible assets in excess of 25 percent of intangible primary capital will be subject to close scrutiny. In addition, for the purpose of calculating capital ratios of state member banks, the Federal Reserve will deduct goodwill from primary capital and total capital. The Federal Reserve may, on a case-by-case basis, make further adjustments to a bank's capital ratios based on the amount of intangible assets (aside from goodwill) in excess of the 25 percent threshold level or on the specific character of the bank's intangible assets in relation to its overall financial condition. Such adjustments may require some banks to raise additional capital.

In addition, state member banks and bank holding companies are expected to review periodically the value at which intangible assets are carried on their balance sheets to determine whether there has been any impairment of value or whether changing circumstances warrant a shortening of amortization periods. Institutions should make appropriate reductions in carrying values and amortization periods in light of this review, and examiners will evaluate the treatment of intangible assets during on-site examinations.

DEFINITION OF CAPITAL TO BE USED IN DETERMINING CAPITAL ADEQUACY OF BANK HOLDING COMPANIES AND STATE MEMBER BANKS

Primary Capital Components

The components of primary capital are:

—Common stock,
—Perpetual preferred stock (preferred stock that does not have a stated maturity date and that may not be redeemed at the option of the holder),
—Surplus (excluding surplus relating to limited-life preferred stock),
—Undivided profits,
—Contingency and other capital reserves,
—Mandatory convertible instruments [2],
—Allowance for possible loan and lease losses (exclusive of allocated transfer risk reserves),
—Minority interest in equity accounts of consolidated subsidiaries.

Secondary Capital Components

The components of secondary capital are:

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[2] See the definitional section below that lists the criteria for mandatory convertible instruments to qualify as primary capital.

—Limited-life preferred stock (including related surplus) and

—Bank subordinated notes and debentures and unsecured long-term debt of the parent company and its nonbank subsidiaries.

Restrictions Relating to Capital Components

To qualify as primary or secondary capital, a capital instrument should not contain or be covered by any convenants, terms, or restrictions that are inconsistent with safe and sound banking practices. Examples of such terms are those regarded as unduly interfering with the ability of the bank or holding company to conduct normal banking operations or those resulting in significantly higher dividends or interest payments in the event of a deterioration in the financial condition of the issuer.

The secondary components must meet the following conditions to qualify as capital:

—The instrument must have an original weighted-average maturity of at least seven years.

—The instrument must be unsecured.

—The instrument must clearly state on its face that it is not a deposit and is not insured by a Federal agency.

—Bank debt instruments must be subordinated to claims of depositors.

—For banks only, the aggregate amount of limited-life preferred stock and subordinate debt qualifying as capital may not exceed 50 percent of the amount of the bank's primary capital.

As secondary capital components approach maturity, the banking organization must plan to redeem or replace the instruments while maintaining an adequate overall capital position. Thus, the remaining maturity of secondary capital components will be an important consideration in assessing the adequacy of total capital.

Capital Ratios

The primary and total capital ratios for bank holding companies are computed as follows:

Primary capital ratio:

Primary capital components/Total assets + Allowance for loan and lease losses (exclusive of allocated transfer risk reserves)

Total capital ratio:

Primary capital components + Secondary capital components/Total assets + Allowance for loan and lease losses (exclusive of allocated transfer risk reserves)

The primary and total capital ratios for state member banks are computed as follows:

Primary capital ratio:

Primary capital components—Goodwill/Average total assets + Allowance for loan and lease losses (exclusive of allocated transfer risk reserves)—Goodwill

Total capital ratio:

Primary capital components + Secondary capital components—Goodwill/Average total assets + Allowance for loan and lease losses (exclusive of allocated transfer risk reserves)—Goodwill

Generally, period-end amounts will be used to calculate bank holding company ratios. However, the Federal Reserve will discourage temporary balance sheet adjustments or any other "window dressing" practices designed to achieve transitory compliance with the guidelines. Banking organizations are expected to maintain adequate capital positions at all times. Thus, the Federal Reserve will, on a case-by-case basis, use average total assets in the calculation of bank holding company capital ratios whenever this approach provides a more meaningful indication of an individual holding company's capital position.

For the calculation of bank capital ratios, "average total assets" will generally be defined as the quarterly average total assets figure reported on the bank's Report of Condition. If warranted, however, the Federal Reserve may calculate bank capital ratios based upon total assets as of period-end. All other components of the bank's capital ratios will be based upon period-end balances.

CRITERIA FOR DETERMINING THE PRIMARY CAPITAL STATUS OF MANDATORY CONVERTIBLE SECURITIES OF BANK HOLDING COMPANIES AND STATE MEMBER BANKS

Mandatory convertible securities are subordinated debt instruments that are eventually transformed into common or perpetual preferred stock within a specified period of time, not to exceed 12 years. To be counted as primary capital, mandatory convertible securities must meet the criteria set forth below. These criteria cover the two basic types of mandatory convertible securities: "equity contract notes"—securities that obligate the holder to take common or perpetual preferred stock of the issuer in lieu of cash for repayment of principal, and "equity commitment notes"—securities that are redeemable only with the proceeds from the sale of common or perpetual preferred stock. Both equity commitment notes and equity contract notes qualify as primary capital for bank holding companies, but only equity contract notes qualify as primary capital for banks.[3]

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[3] Equity commitment notes that were issued by state member banks prior to May

Continued

Criteria Applicable to Both Types of Mandatory Convertible Securities

a. The securities must mature in 12 years or less.

b. The maximum amount of mandatory convertible securities that may be counted as primary capital is limited to 20 percent of primary capital, exclusive of mandatory convertible securities.[4] (Amounts outstanding in excess of the 20 percent limitation may be counted as secondary capital provided they meet the requirements of secondary capital instruments.)

c. The issuer may redeem securities prior to maturity only with the proceeds from the sale of common or perpetual preferred stock of the bank or bank holding company. Any exception to this rule must be approved by the Federal Reserve. The securities may not be redeemed with the proceeds of another issue of mandatory convertible securities. Nor may the issuer repurchase or acquire its own mandatory convertible securities for resale or reissuance.

d. Holders of the securities may not accelerate the payment of principal except in the event of bankruptcy, insolvency, or reorganization.

e. The securities must be subordinate in right of payment to all senior indebtedness of the issuer. In the event that the proceeds of the securities are reloaned to an affiliate, the loan must be subordinated to the same degree as the original issue.

f. An issuer that intends to dedicate the proceeds of an issue of common or perpetual preferred stock to satisfy the funding requirements of an issue of mandatory convertible securities (i.e. the requirement to retire or redeem the notes with the proceeds from the issuance of common or perpetual preferred stock) generally must make such a dedication during the quarter in which the new common or preferred stock is issued.[5] As a general rule, if the dedication is not made within the prescribed period, then the securities issued may not at a later date be dedicated to the retirement or redemption of the mandatory convertible securities.[6]

Additional Criteria Applicable to Equity Contract Notes

a. The note must contain a contractual provision (or must be issued with a mandatory stock purchase contract) that requires the holder of the instrument to take the common or perpetual stock of the issuer in lieu of cash in satisfaction of the claim for principal repayment. The obligation of the holder to take the common or perpetual preferred stock of the issuer may be waived if, and to the extent that, prior to the maturity date of the obligation, the issuer sells new common or perpetual preferred stock and dedicates the proceeds to the retirement or redemption of the notes. The dedication generally must be made during the quarter in which the new common or preferred stock is issued.

b. A stock purchase contract may be separated from a security only if: (1) The holder of the contract provides sufficient collateral[7] to the issuer, or to an independent trustee for the benefit of the issuer, to assure performance under the contract and (2) the stock purchase contract requires the purchase of common or perpetual preferred stock.

15, 1985 will continue to be included in primary capital.

[4] The maximum amount of equity commitment notes that may be counted as primary capital is limited to 10 percent of primary capital exclusive of mandatory convertible securities.

[5] Common or perpetual preferred stock issued under dividend reinvestment plans or issued to finance acquisitions, including acquisitions of business entities, may be dedicated to the retirement or redemption of the mandatory convertible securities. Documentation certified by an authorized agent of the issuer showing the amount of common stock or perpetual preferred stock issued, the dates of issue, and amounts of such issues dedicated to the retirement or redemption of mandatory convertible securities will satisfy the dedication requirement.

[6] The dedication procedure is necessary to ensure that the primary capital of the issuer is not overstated. For each dollar of common or perpetual preferred proceeds dedicated to the retirement or redemption of the notes, there is a corresponding reduction in the amount of outstanding mandatory securities that may qualify as primary capital. *De minimis* amounts (in relation to primary capital) of common or perpetual preferred stock issued under arrangements in which the amount of stock issued is not predictable, such as dividend reinvestment plans and employee stock option plans (but excluding public stock offerings and stock issued in connection with acquisitions), should be dedicated by no later than the company's fiscal year end.

[7] Collateral is defined as: (1) Cash or certificates of deposit; (2) U.S. government securities that will mature prior to or simultaneous with the maturity of the equity contract and that have a par or maturity value at least equal to the amount of the holder's obligation under the stock purchase contract; (3) standby letters of credit issued by an insured U.S. bank that is not an affiliate of the issuer; or (4) other collateral as may be designated from time to time by the Federal Reserve.

Additional Criteria Applicable to Equity Commitment Notes

a. The indenture or note agreement must contain the following two provisions:

1. The proceeds of the sale of common or perpetual preferred stock will be the sole source of repayment for the notes, and the issuer must dedicate the proceeds for the purpose of repaying the notes. (Documentation certified by an authorized agent of the issued showing the amount of common or perpetual preferred stock issued, the dates of issue, and amounts of such issues dedicated to the retirement or redemption of mandatory convertible securities will satisfy the dedication requirement.)

2. By the time that one-third of the life of the securities has run, the issuer must have raised and dedicated an amount equal to one-third of the original principal of the securities. By the time that two-thirds of the life of the securities has run, the issuer must have raised and dedicated an amount equal to two-thirds of the original principal of the securities. At least 60 days prior to the maturity of the securities, the issuer must have raised and dedicated an amount equal to the entire original principal of the securities. Proceeds dedicated to redemption or retirement of the notes must come only from the sale of common or perpetual preferred stock.[8]

b. If the issuer fails to meet any of these periodic funding requirements, the Federal Reserve immediately will cease to treat the unfunded securities as primary capital and will take appropriate supervisory action. In addition, failure to meet the funding requirements will be viewed as a breach of a regulatory commitment and will be taken into consideration by the Board in acting on statutory applications.

c. If a security is issued by a subsidiary of a bank or bank holding company, any guarantee of the principal by that subsidiary's parent bank or bank holding company must be subordinate to the same degree as the security issued by the subsidiary and limited to repayment of the principal amount of the security at its final maturity.

d. The maximum amount of equity commitment notes that may be counted as primary capital for a bank holding company is limited to 10 percent of primary capital exclusive of mandatory convertible securities. Amounts outstanding in excess of the 10 percent limitation may be counted as secondary capital provided they meet the requirements of secondary capital instruments.

[50 FR 16066, Apr. 24, 1985]

APPENDIX B—POLICY STATEMENT FOR FORMATION OF SMALL ONE-BANK HOLDING COMPANIES

Assessment of Financial Factors

In acting on applications filed under the Bank Holding Company Act, the Board has adopted, and continues to follow, the principle that bank holding companies should serve as a source of strength for their subsidiary banks. When bank holding companies incur debt and rely upon the earnings of their subsidiary banks as the means of repaying such debt, a question arises as to the probable effect upon the financial condition of the company and its subsidiary bank or banks.

The Board believes that a high level of debt at the parent holding company level impairs the ability of a bank holding company to provide financial assistance to its subsidiary bank and in some cases the servicing requirements on such debt may be a significant drain on the bank's resources. For these reasons, the Board has not favored the use of acquisition debt in the formation of bank holding companies. Nevertheless, the Board has recognized that the transfer of ownership of small banks often requires the use of acquisition debt. The Board therefore has permitted the formation of small one-bank holding companies with debt levels higher than would be permitted for larger or multibank holding companies. Approval of these applications has been given on the condition that the small one-bank holding companies demonstrate the ability to service the acquisition debt without straining the capital of their subsidiary bank and, further, that such companies restore their ability to serve as a source of strength for their subsidiary bank within a relatively short period of time.

In the interest of furthering its policy of facilitating the transfer of ownership in banks without diluting bank safety and soundness, the Board has reexamined the analytical framework and financial criteria it applies when considering the formation of small one-bank holding companies and has adopted certain revisions in its procedures and standards as described below.

The revised criteria shift the focus from debt repayment to the relationship between debt and equity at the parent holding company. The holding company will have the option of improving the relationship of debt to equity by repaying the principal amount of its debt or through the retention of earnings, or both. Under these procedures, newly organized small one-bank holding companies will be expected to reduce the relationship of their debt to equity over a reasonable period of time to a level comparable to that maintained by many large and multibank holding companies.

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[8] The funded portions of the securities will be deducted from primary capital to avoid double counting.

In general, this policy is intended to apply only to one-bank holding companies that would not have significant leveraged nonbank activities and whose subsidiary bank would have total assets of approximately $150 million or less at the time the application is filed. Small one-bank holding companies formed before the initial effective date of the Board's policy concerning formation of small one-bank holding companies and assessment of financial factors (March 28, 1980) may switch to a plan that adheres to the intent of this policy provided they comply with criteria 2, 3, and 4 set forth below.

The criteria are as follows:

General

In evaluating applications filed pursuant to section 3(a)(1) of the Bank Holding Company Act, as amended, when the applicant intends to incur debt to finance the acquisition of a small bank, the Board will take into account a full range of financial and other information, including the recent trend and stability of earnings of the bank, the past and prospective growth of the bank, the quality of the bank's assets, the ability of the applicant to meet debt servicing requirements without placing an undue strain on the bank's resources, and the record and competency of management of the applicant and the bank. In addition, the Board will require applicants to meet the minimum requirements set forth below. As a general rule, failure to meet any of these requirements will result in denial of the application; however, the Board reserves the right to make exceptions if the circumstances warrant.

1. *Minimum Down Payment.* The amount of acquisition debt should not exceed 75 percent of the purchase price of the bank to be acquired. When the owner(s) of the holding company incur debt to finance the purchase of the bank, such debt will be considered acquisition debt even though it does not represent an obligation of the bank holding company, unless the owner(s) can demonstrate that such debt can be serviced without reliance on the resources of the bank or bank holding company.

2. *Maintenance of Adequate Capital.* An applicant proposing to use acquisition debt must demonstrate to the satisfaction of the Board that any debt servicing requirements to which the bank holding company may be subject would not cause the subsidiary bank's ratio of gross capital to assets to fall below 8 percent during the 12-year period following consummation of the acquisition. Gross capital is defined as the sum of total stockholders' equity, the allowance for possible loan losses, and subordinated capital notes and debentures.

3. *Reduction in Parent Company Leverage.* The applicant must demonstrate to the satisfaction of the Board that the parent holding company's ratio of debt to equity will decline to 30 percent within 12 years after consummation of the acquisition. The holding company must also demonstrate that it will be able to safely meet debt servicing and other requirements imposed by its creditors.

The term "debt," as used in the ratio of debt to equity, means any borrowed funds (exclusive of short-term borrowings that arise out of current transactions, the proceeds of which are used for current transactions), and any securities issued by, or obligations of, the holding company that are the functional equivalent of borrowed funds.

The term "equity," as used in the ratio of debt to equity, means the total stockholders' equity of the bank holding company adjusted to reflect the periodic amortization of "goodwill" (defined as the excess of cost of any acquired company over the sum of the amounts assigned to identifiable assets acquired, less liabilities assumed) in accordance with generally accepted accounting principles. In determining the total amount of stockholders' equity, the bank holding company should account for its investments in the common stock of subsidiaries by the equity method of accounting.

Ordinarily the Board does not view redeemable preferred stock as a substitute for common stock in a one-bank holding company formation. Nevertheless, to a limited degree and under certain circumstances the Board will consider redeemable preferred stock as equity in the capital accounts of the holding company if the following conditions are met: (1) The preferred stock is redeemable only at the option of the issuer and (2) the debt to equity ratio of the holding company would be at or remain below 30 percent following the redemption or retirement of any preferred stock. Preferred stock that is convertible into common stock of the holding company may be treated as equity.

4. *Dividend Restrictions.* The bank holding company is not expected to pay any corporate dividends on common stock until such time as its debt to equity ratio is below 30 percent. However, some dividends may be permitted provided all of the following conditions are met: (a) The applicant has begun making scheduled repayments of principal on the acquisition debt; (b) such scheduled repayments of principal are reasonable in amount, will be made at least annually, and will allow for the retirement of the acquisition debt over a period not to exceed 25 years; and (c) the applicant can clearly demonstrate at the time the application is filed that such dividends will not jeopardize the

ability of the holding company to reduce its debt to equity ratio to 30 percent within 12 years of consummation of the proposal or cause the gross capital to assets of the subsidiary bank to fall below 8 percent over the same period. Also, it is expected that dividends will be eliminated if the holding company is not meeting the projections made at the time the application was filed regarding the ability of the holding company to reduce the debt to equity ratio to 30 percent within 12 years of consummation of the proposal.

The requirements of this Policy Statement should be read in the context of the Board's Capital Adequacy Guidelines (Appendix A), including the definitions of capital and its components.

INTERPRETATIONS

§ 225.101 Bank holding company's subsidiary banks owning shares of nonbanking companies.

(a) The Board's opinion has been requested on the following related matters under the Bank Holding Company Act of 1956.

(b) The question is raised as to whether shares in a nonbanking company which were acquired by a banking subsidiary of the bank holding company many years ago when their acquisition was lawful and are now held as investments, and which do not include more than 5 percent of the outstanding voting securities of such nonbanking company and do not have a value greater than 5 percent of the value of the bank holding company's total assets, are exempted from the divestment requirements of the Act by the provisions of section 4(c)(5) of the Act.

(c) In the Board's opinion, this exemption is as applicable to such shares when held by a banking subsidiary of a bank holding company as when held directly by the bank holding company itself. While the exemption specifically refers only to shares held or acquired by the bank holding company, the prohibition of the Act against retention of nonbanking interests applies to indirect as well as direct ownership of shares of a nonbanking company, and, in the absence of a clear mandate to the contrary, any exception to this prohibition should be given equal breadth with the prohibition. Any other interpretation would lead to unwarranted results.

(d) Although certain of the other exemptions in section 4(c) of the Act specifically refer to shares held or acquired by banking subsidiaries, an analysis of those exemptions suggests that such specific reference to banking subsidiaries was for the purpose of excluding nonbanking subsidiaries from such exemptions, rather than for the purpose of providing an inclusionary emphasis on banking subsidiaries.

(e) It should be noted that the Board's view as to this question should not be interpreted as meaning that each banking subsidiary could own up to 5 percent of the stock of the same nonbanking organization. In the Board's opinion the limitations set forth in section 4(c)(5) apply to the aggregate amount of stock held in a particular organization by the bank holding company itself and by all of its subsidiaries.

(f) Secondly, question is raised as to whether shares in a nonbanking company acquired in satisfaction of debts previously contracted (d.p.c.) by a banking subsidiary of the bank holding company may be retained if such shares meet the conditions contained in section 4(c)(5) as to value and amount, notwithstanding the requirement of section 4(c)(2) that shares acquired d.p.c. be disposed of within two years after the date of their acquisition or the date of the Act, whichever is later. In the Board's opinion, the 5 percent exemption provided by section 4(c)(5) covers any shares, including shares acquired d.p.c., that meet the conditions set forth in that exemption, and, consequently, d.p.c. shares held by a banking subsidiary of a bank holding company which meet such conditions are not subject to the two-year disposition requirement prescribed by section 4(c)(2), although any such shares would, of course, continue to be subject to such requirement for disposition as may be prescribed by provisions of any applicable banking laws or by the appropriate bank supervisory authorities.

(g) Finally, question is raised as to whether shares held by banking subsidiaries of the bank holding company in companies holding bank premises of such subsidiaries are exempted from the divestment requirements by section 4(c)(1) of the Act. It is the Board's view that section 4(c)(1), exempting shares owned or acquired by a bank holding company in any company engaged solely in holding or operating properties used wholly or substantially by any subsidiary bank, is to be read and interpreted, like section 4(c)(5), as applying to shares owned indirectly by a bank holding company through a banking subsidiary as well as to shares held directly by the bank holding company. A contrary interpretation would impair the right that member banks controlled by bank holding companies would otherwise have to invest, subject to the limitations of section 24A of the Federal Reserve Act, in stock of companies holding their bank premises; and such a result was not, in the Board's opinion, intended by the Bank Holding Company Act.

[21 FR 10472, Dec. 29, 1956. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.102 Bank holding company indirectly owning nonbanking company through subsidiaries.

(a) The Board of Governors has been requested for an opinion regarding the exemptions contained in section 4(c)(5) of the Bank Holding Company Act of 1956. It is stated that Y Company is an investment company which is not a bank holding company and which is not engaged in any business other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting securities of any company and do not include any asset having a value greater than 5 per centum of the value of the total assets of X Corporation, a bank holding company. It is stated that direct ownership by X Corporation of voting shares of Y Company would be exempt by reason of section 4(c)(5) from the prohibition of section 4 of the Act against ownership by bank holding companies of nonbanking assets.

(b) It was asked whether it makes any difference that the shares of Y Company are not owned directly by X Corporation but instead are owned through Subsidiaries A and B. X Corporation owns all the voting shares of Subsidiary A, which owns one-half of the voting shares of Subsidiary B. Subsidiaries A and B each own one-third of the voting shares of Y Company.

(c) Section 4(c)(5) is divided into two parts. The first part exempts the ownership of securities of nonbanking companies when the securities do not include more than 5 percent of the voting securities of the nonbanking company and do not have a value greater than 5 percent of the value of the total assets of the bank holding company. The second part exempts the ownership of securities of an investment company which is not a bank holding company and is not engaged in any business other than investing in securities, provided the securities held by the investment company meet the 5 percent tests mentioned above.

(d) In § 225.101, the Board expressed the opinion that the first exemption in section 4(c)(5):

> * * * is as applicable to such shares when held by a banking subsidiary of a bank holding company as when held directly by the bank holding company itself. While the exemption specifically refers only to shares held or acquired by the bank holding company, the prohibition of the Act against retention of nonbanking interests applies to indirect as well as direct ownership of shares of a nonbanking company, and, in the absence of a clear mandate to the contrary, any exception to this prohibition should be given equal breadth with the prohibition. Any other interpretation would lead to unwarranted results.

(e) The Board is of the view that the principles stated in that opinion are also applicable to the second exemption in section 4(c)(5), and that they apply whether or not the subsidiary owning the shares is a banking subsidiary. Accordingly, on the basis of the facts presented, the Board is of the opinion that the second exemption in section 4(c)(5) applies to the indirect ownership by X Corporation of shares of Y Company through Subsidiaries A and B.

[22 FR 2533, Apr. 13, 1957. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.103 Bank holding company acquiring stock by dividends, stock splits or exercise of rights.

(a) The Board of Governors has been asked whether a bank holding company may receive bank stock dividends or participate in bank stock splits without the Board's prior approval, and whether such a company may exercise, without the Board's prior approval, rights to subscribe to new stock issued by banks in which the holding company already owns stock.

(b) Neither a stock dividend nor a stock split results in any change in a stockholder's proportional interest in the issuing company or any increase in the assets of that company. Such a transaction would have no effect upon the extent of a holding company's control of the bank involved; and none of the five factors required by the Bank Holding Company Act to be considered by the Board in approving a stock acquisition would seem to have any application. In view of the objectives and purposes of the act, the word "acquire" would not seem reasonably to include transactions of this kind.

(c) On the other hand, the exercise by a bank holding company of the right to subscribe to an issue of additional stock of a bank could result in an increase in the holding company's proportional interest in the bank. The holding company would voluntarily pay additional funds for the extra shares and would "acquire" the additional stock even under a narrow meaning of that term. Moreover, the exercise of such rights would cause the assets of the issuing company to be increased and in a sense, therefore, the "size or extent" of the bank holding company system would be expanded.

(d) In the circumstances, it is the Board's opinion that receipt of bank stock by means of a stock dividend or stock split, assuming no change in the class of stock, does not require the Board's prior approval under the act, but that purchase of bank stock by a bank holding company through the exercise of rights does require the Board's prior approval, unless one of the exceptions set forth in section 3(a) is applicable.

[22 FR 7461, Sept. 19, 1957. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.104 "Services" under section 4(c)(1) of Bank Holding Company Act.

(a) Section 4(c)(1) of the Bank Holding Company Act, among other things, exempts from the nonbanking divestment requirements of section 4(a) of the Act shares of a company engaged "solely in the business of furnishing services to or performing services for" its bank holding company or subsidiary banks thereof.

(b) The Board of Governors has had occasion to express opinions as to whether this section of law applies to the following two sets of facts:

(1) In the first case, Corporation X, a nonbanking subsidiary of a bank holding company (Holding Company A), was engaged in the business of purchasing installment paper suitable for investment by banking subsidiaries of Holding Company A. All installment paper purchased by Corporation X was sold by it to a bank which is a subsidiary of Holding Company A, without recourse, at a price equal to the cost of the installment paper to Corporation X, and with compensation to the latter based on the earnings from such paper remaining after certain reserves, expenses and charges. The subsidiary bank sold participations in such installment paper to the other affiliated banks of Holding Company A which desired to participate. Purchases by Corporation X consisted mainly of paper insured under Title I of the National Housing Act and, in addition, Corporation X purchased time payment contracts covering sales of appliances by dealers under contractual arrangements with utilities, as well as paper covering home improvements which was not insured. Pursuant to certain service agreements, Corporation X made all collections, enforced guaranties, filed claims under Title I insurance and performed other services for the affiliated banks. Also Corporation X rendered to banking subsidiaries of Holding Company A various accounting, statistical and advisory services such as payroll, life insurance and budget loan installment account.

(2) In the second case, Corporation Y, a nonbanking subsidiary of a bank holding company (Holding Company B, which was also a bank), solicited business on behalf of Holding Company B from dealers, throughout several adjoining or contiguous States, who made time sales and desired to convert their time sales paper into cash; but Corporation Y made no loans or purchases of sales contracts and did not discount or advance money for time sales obligations. Corporation Y investigated credit standings of purchasers obligated on time sale contracts to be acquired by Holding Company B. Corporation Y received from dealers the papers offered by them and inspected such papers to see that they were in order, and transmitted to Holding Company B for its determination to purchase, including, in some cases, issuance of drafts in favor of dealers in order to facilitate their prompt receipt of payment for installment paper purchased by Holding Company B. Corporation Y made collections of delinquent paper or delinquent installments, which sometimes involved repossession and resale of the automobile or other property which secured the paper. Also, upon request of purchasers obligated on paper held by Holding Company B, Corporation Y transmitted installment payments to Holding Company B. Holding Company B reimbursed Corporation Y for its actual costs and expenses in performing the services mentioned above, including the salaries and wages of all Corporation Y officers and employees.

(c) While the term "services" is sometimes used in a broad and general sense, the legislative history of the Bank Holding Company Act indicates that in section 4(c)(1) the word was meant to be somewhat more limited in its application. An early version of the bill specifically exempted companies engaged in serving the bank holding company and its subsidiary banks in "auditing, appraising, investment counseling". The statute as finally enacted does not expressly mention any specific type of servicing activity for exemption. In recommending the change, the Senate Banking and Currency Committee stated that the types of services contemplated are "in the fields of advertising, public relations, developing new business, organizations, operations, preparing tax returns, personnel, and many others", which indicates that latitude should be given to the range of activities contemplated by this section beyond those specifically set forth in the early draft of the bill. (84th Cong., 2d Sess., Senate Report 1095, Part 2, p. 3.) It nevertheless seems evident that Congress intended such services to be types of activities generally comparable to those mentioned above from the early bill ("auditing, appraising, investment counseling") and in the excerpt from the Committee Report on the later bill ("advertising, public relations, developing new business, organization, operations, preparing tax returns, personnel, and many others"). This legislative history and the context in which the term "services" is used in section 4(c)(1) seem to suggest that the term was in general intended to refer to servicing operations which a bank could carry on itself, but which the bank or its holding company chooses to have done through another organization. Moreover, the report of the Senate Banking and Currency Committee indicated that the types of servicing permitted under section 4(c)(1) are to be distinguished from activities of a "financial, fiduciary, or insurance nature", such as those which might be considered for possible exemption under section 4(c)(6) of the Act.

(d) With respect to the first set of facts, the Board expressed the opinion that certain of the activities of Corporation X, such as the accounting, statistical and advisory services referred to above, may be within the range of servicing activities contemplated by section 4(c)(1), but that this would not appear to be the case with the main activity of Corporation X, which was the purchase of installment paper and the resale of such paper at cost, without recourse, to banking subsidiaries of Holding Company A. This latter and basic activity of Corporation X appeared to involve essentially a financial relationship between it and the banking subsidiaries of Holding Company A and appeared beyond the category of servicing exemptions contemplated by section 4(c)(1) of the Act. Accordingly, it was the Board's view that Corporation X could not be regarded as qualifying under section 4 (c)(1) as a company engaged "solely in the business of furnishing services to or performing services for" Holding Company A or subsidiary banks thereof.

(e) With respect to the second set of facts, the Board expressed the opinion that some of the activities engaged in by Corporation Y were clearly within the range of servicing activities contemplated by section 4(c)(1). There was some question as to whether or not some of the other activities of Corporation Y mentioned above could meet the test, but on balance, it seemed that all such activities probably were activities in which Holding Company B, which as already indicated was a bank, could itself engage, at the present locations of Corporation Y, without being engaged in the operation of bank branches at those locations. In the circumstances, while the question was not free from doubt, the Board expressed the opinion that the activities of Corporation Y were those of a company engaged "solely in the business of furnishing services to or performing services for" Holding Company B within the meaning of section 4(c)(1) of the act, and that, accordingly, the control by Holding Company B of shares in Corporation Y was exempted under that section.

[23 FR 2675, May 23, 1958. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.107 Acquisition of stock in small business investment company.

(a) A registered bank holding company requested an opinion by the Board of Governors with respect to whether that company and its banking subsidiaries may acquire stock in a small business investment company organized pursuant to the Small Business Investment Act of 1958.

(b) It is understood that the bank holding company and its subsidiary banks propose to organize and subscribe for stock in a small business investment company which would be chartered pursuant to the Small Business Investment Act of 1958 which provides for long-term credit and equity financing for small business concerns.

(c) Section 302(b) of the Small Business Investment Act authorizes national banks, as well as other member banks and nonmember insured banks to the extent permitted by applicable State law, to invest capital in small business investment companies not exceeding one percent of the capital and surplus of such banks. Section 4(c)(4) of the Bank Holding Company Act exempts from the prohibitions of section 4 of the Act "shares which are of the kinds and amounts eligible for investment by National banking associations under the provisions of section 5136 of the Revised Statutes". Section 5136 of the Revised Statutes (paragraph "Seventh") in turn provides, in part, as follows:

> Except as hereinafter provided or otherwise permitted by law nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation.

Since the shares of a small business investment company are of a kind and amount expressly made eligible for investment by a national bank under the Small Business Investment Act of 1958, it follows, therefore, that the ownership or control of such shares by a bank holding company would be exempt from the prohibitions of section 4 of the Bank Holding Company Act by virtue of the provisions of section 4(c)(4) of that Act. Accordingly, the ownership or control of such shares by the bank holding company would be exempt from the prohibitions of section 4 of the Bank Holding Company Act.

(d) An additional question is presented, however, as to whether section 6 of the Bank Holding Company Act prohibits banking subsidiaries of the bank holding company from purchasing stock in a small business investment company where the latter is a "subsidiary" under that Act.

(e) Section 6(a)(1) of the Act makes it unlawful for a bank to invest any of its funds in the capital stock of any other subsidiary of the bank holding company. However, section 6(a)(1) was, in effect, amended by section 302(b) of the Small Business Investment Act (15 U.S.C. 682) as amended by the Act of June 11, 1960 (Pub. L. 86-502) so as to nullify this prohibition when the "subsidiary" is a small business investment company.

(f) Accordingly, section 6 of the Bank Holding Company Act does not prohibit banking subsidiaries of the bank holding company from purchasing stock in a small business investment company organized pursuant to the Small Business Investment Act of 1958, where that company is or will be a subsidiary of the bank holding company.

[25 FR 7485, Aug. 9, 1960. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.109 "Services" under section 4(c)(1) of Bank Holding Company Act.

(a) The Board of Governors has been requested by a bank holding company for an interpretation under section 4(c)(1) of the Bank Holding Company Act which, among other things, exempts from the nonbanking divestment requirements of section 4(a) of the Act, shares of a company engaged "solely in the business of furnishing services to or performing services for" its bank holding company or subsidiary banks thereof.

(b) It is understood that a nonbanking subsidiary of the holding company engages in writing comprehensive automobile insurance (fire, theft, and collision) which is sold only to customers of a subsidiary bank of the holding company in connection with the bank's retail installment loans; that when payment is made on a loan secured by a lien on a motor vehicle, renewal policies are not issued by the insurance company; and that the insurance company receives the usual agency commissions on all comprehensive automobile insurance written for customers of the bank.

(c) It is also understood that the insurance company writes credit life insurance for the benefit of the bank and its installment-loan customers; that each insured debtor is covered for an amount equal to the unpaid balance of his note to the bank, not to exceed $5,000; that as the note is reduced by regular monthly payments, the amount of insurance is correspondingly reduced so that at all times the debtor is insured for the unpaid balance of his note; that each insurance contract provides for payment in full of the entire loan balance upon the death or permanent disability of the insured borrower; and that this credit life insurance is written only at the request of, and solely for, the bank's borrowing customers. It is further understood that the insurance company engages in no other activity.

(d) As indicated in § 225.104 (23 FR 2675), the term "services," while sometimes used in a broad and general sense, appears to be somewhat more limited in its application in section 4(c)(1) of the Bank Holding Company Act. Unlike an early version of the Senate bill (S. 2577, before amendment), the act as finally enacted does not expressly mention any type of servicing activity for exemption. The legislative history of the Act, however, as indicated in the relevant portion of the record of the Senate Banking and Currency Committee on amended S. 2577 (84th Cong., 2d Sess., Senate Report 1095, Part 2, p. 3) makes it evident that Congress had in mind the exemption of services comparable to the types of activities mentioned expressly in the early Senate bill ("auditing, appraising, investment counseling") and in the Committee Report on the later bill ("advertising, public relations, developing new business, organization, operations, preparing tax returns, personnel, and many others"). Furthermore, this Committee Report expressly stated that the provision of section 4(c)(1) with respect to "furnishing services to or performing services for" was not intended to supplant the exemption contained under section 4 (c)(6) of the Act.

(e) The only activity of the insurance company (writing comprehensive automobile insurance and credit life insurance) appears to involve an insurance relationship between it and a banking subsidiary of the holding company which the legislative history clearly indicates does not come within the meaning of the phrase "furnishing services to or performing services for" a bank holding company or its banking subsidiaries.

(f) Accordingly, it is the Board's view that the insurance company could not be regarded as qualifying as a company engaged "solely in the business of furnishing services to or performing services for" the bank holding company or banks with respect to which the latter is a bank holding company.

[23 FR 9017, Nov. 20, 1958. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.111 Limit on investment by bank holding company system in stock of small business investment companies.

(a) Under the provisions of section 4(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1843), a bank holding company may acquire shares of nonbank companies "which are of the kinds and amounts eligible for investment" by national banks. Pursuant to section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b)), as amended by Title II of the Small Business Act Amendments of 1967 (Pub. L. 90-104, 81 Stat. 268, 270), a national bank may invest in stock of small business investment companies (SBICs) subject to certain restrictions.

(b) On the basis of the foregoing statutory provisions, it is the position of the Board that a bank holding company may acquire direct or indirect ownership or control of stock of an SBIC subject to the following limits:

(1) The total direct and indirect investments of a bank holding company in stock of SBICs may not exceed:

(i) With respect to all stock of SBICs owned or controlled directly or indirectly by a subsidiary bank, 5 percent of that bank's capital and surplus;

(ii) With respect to all stock of SBICs owned directly by a bank holding company that is a bank, 5 percent of that bank's capital and surplus; and

(iii) With respect to all stock of SBICs otherwise owned or controlled directly or indirectly by a bank holding company, 5 percent of its proportionate interest in the capital and surplus of each subsidiary bank (that is, the holding company's percentage of that bank's stock times that bank's capital and surplus) less that bank's investment in stock of SBICs; and

(2) A bank holding company may not acquire direct or indirect ownership or control of 50 percent or more of the shares of any class of equity securities of an SBIC that have actual or potential voting rights.

(c) A bank holding company or a bank subsidiary that acquired direct or indirect ownership or control of 50 percent or more of any such class of equity securities prior to January 9, 1968, is not required to divest to a level below 50 percent. A bank that acquired 50 percent or more prior to January 9, 1968, may become a subsidiary in a holding company system without any necessity for divesting to a level below 50 percent: *Provided*, That such action does not result in the bank holding company acquiring control of a percentage greater than that controlled by such bank.

(12 U.S.C. 248. Interprets 12 U.S.C. 1843, 15 U.S.C. 682)

[33 FR 6967, May 9, 1968. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.112 Indirect control of small business concern through convertible debentures held by small business investment company.

(a) A question has been raised concerning the applicability of provisions of the Bank Holding Company Act of 1956 to the acquisition by a bank holding company of stock of a small business investment company ("SBIC") organized pursuant to the Small Business Investment Act of 1958 ("SBI Act").

(b) As indicated in the interpretation of the Board (§ 225.107) published at 23 FR 7813, it is the Board's opinion that, since stock of an SBIC is eligible for purchase by national banks and since section 4(c)(4) of the Holding Company Act exempts stock eligible for investment by national banks from the prohibitions of section 4 of that Act, a bank holding company may lawfully acquire stock in such an SBIC.

(c) However, section 304 of the SBI Act provides that debentures of a small business concern purchased by a small business investment company may be converted at the option of such company into stock of the small business concern. The question therefore arises as to whether, in the event of such conversion, the parent bank holding company would be regarded as having acquired "direct or indirect ownership or control" of stock of the small business concern in violation of section 4(a) of the Holding Company Act.

(d) The Small Business Investment Act clearly contemplates that one of the primary purposes of that Act was to enable SBICs to provide needed equity capital to small business concerns through the purchase of debentures convertible into stock. Thus, to the extent that a stockholder in an SBIC might acquire indirect control of stock of a small business concern, such control appears to be a natural and contemplated incident of ownership of stock of the SBIC. The Office of the Comptroller of the Currency has informally indicated concurrence with this interpretation insofar as it affects investments by national banks in stock of an SBIC.

(e) Since the exception as to stock eligible for investment by national banks contained in section 4(c)(4) of the Holding Company Act was apparently intended to permit a bank holding company to acquire any stock that would be eligible for purchase by a national bank, it is the Board's view that section 4(a)(1) of the Act does not prohibit a bank holding company from acquiring stock of an SBIC, even though ownership of such stock may result in the acquisition of indirect ownership or control of stock of a small business concern which would not itself be eligible for purchase directly by a national bank or a bank holding company.

[24 FR 1584, Mar. 4, 1959. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.113 Services under section 4(a) of Bank Holding Company Act.

(a) The Board of Governors has been requested for an opinion as to whether the performance of certain functions by a bank holding company for four banks of which it owns less than 25 percent of the voting shares is in violation of section 4(a) of the Bank Holding Company Act.

(b) It is claimed that the holding company is engaged in "managing" four nonsubsidiary banks, for which services it receives "management fees." Specifically, the company engages in the following activities for the four nonsubsidiary banks: (1) Establishment and supervision of loaning policies; (2) direction of the purchase and sale of investment securities; (3) selection and training of officer personnel; (4) establishment and enforcement of operating policies; and (5) general supervision over all policies and practices.

(c) The question raised is whether these activities are prohibited by section 4(a)(2) of the Bank Holding Company Act, which permits a bank holding company to engage in only three categories of business: (1) Banking; (2) managing or controlling banks; and (3) furnishing services to or performing services for any bank of which the holding company owns or controls 25 percent or more of the voting shares.

(d) Clearly, the activities of the company with respect to the four nonsubsidiary banks do not constitute "banking." With respect to the business of "managing or controlling" banks, it is the Board's view that such business, within the purview of section 4(a)(2), is essentially the exercise of a broad governing influence of the sort usually exercised by bank stockholders, as distinguished from direct or active participation in the establishment or carrying out of particular policies or operations. The latter kinds of activities fall within the third category of businesses in which a bank holding company is permitted to engage. In the Board's view, the activities enumerated above fall in substantial part within that third category.

(e) Section 4(a)(2), like all other sections of the Holding Company Act, must be interpreted in the light of all of its provisions, as well as in the light of other sections of the Act. The expression "managing * * * banks," if it could be taken by itself, might appear to include activities of the sort enumerated. However, such an interpretation of those words would virtually nullify the last portion of section 4(a)(2), which permits a holding company to furnish services to or perform services for "any bank of which it owns or controls 25 per centum or more of the voting shares."

(f) Since Congress explicitly authorized the performance of services for banks that are at least 25 percent owned by a holding company, it obviously intended that the holding company should not perform services for banks in which it owns less than 25 percent of the voting shares. However, if the second category—"managing or controlling banks"—were interpreted to permit the holding company to perform services for any bank, including a bank in which it held less than 25 percent of the stock (or no stock whatsoever), the last clause of section 4(a)(2) would be meaningless.

(g) It is principally for this reason—that is, to give effective meaning to the final clause of section 4(a)(2)—that the Board interprets "managing or controlling banks" in that provision as referring to the exercise of a stockholder's management or control of banks, rather than direct and active participation in their operations. To repeat, such active participation in operations falls within the third category ("furnishing services to or performing services for any bank") and consequently may be engaged in only with respect to banks in which the holding company "owns or controls 25 per centum or more of the voting shares."

(h) Accordingly, it is the Board's conclusion that, in performing the services enumerated, the bank holding company is "furnishing services to or performing services for" the four banks referred to. Under the Act such furnishing or performing of services is permissible only if the holding company owns or controls 25 percent of the voting shares of each bank receiving such services, and, since the company owns less than 25 percent of the voting shares of these banks, it follows that these activities are prohibited by section 4(a)(2).

(i) While this conclusion is required, in the Board's opinion, by the language of the statute, it may be noted further that any other conclusion would make it possible for bank holding company or any other corporation, through arrangements for the "managing" of banks in the manner here involved, to acquire effective control of banks without acquiring bank stocks and thus to evade the underlying objectives of section 3 of the Act.

[25 FR 281, Jan. 14, 1960. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.115 Applicability of Bank Service Corporation Act in certain bank holding company situations.

(a) Questions have been presented to the Board of Governors regarding the applicability of the recently enacted Bank Service Corporation Act (Pub. L. 87-856, approved October 23, 1962) in cases involving service corporations that are subsidiaries of bank holding companies under the Bank Holding Company Act of 1956. In addition to being charged with the administration of the latter Act, the Board is named in the Bank Service Corporation Act as the Federal supervisory agency with respect to the performance of bank services for State member banks.

(b) *Holding company-owned corporation serving only subsidiary banks.* (1) One question is whether the Bank Service Corporation Act is applicable in the case of a corporation, wholly owned by a bank holding company, which is engaged in performing "bank services", as defined in section 1(b) of the Act, exclusively for subsidiary banks of the holding company.

(2) Except as noted below with respect to section 5 thereof, the Bank Service Corporation Act is not applicable in this case. This is true because none of the stock of the corporation performing the services is owned by any bank and the corporation, therefore, is not a "bank service corporation" as defined in section 1(c) of the Act. A corporation cannot meet that definition unless part of its stock is owned by two or more banks. The situation clearly is unaffected by section 2(b) of the Act which permits a corporation that fell within the definition initially to continue to function as a bank service corporation although subsequently only one of the banks remains as a stockholder in the corporation.

(3) However, although it is not a bank service corporation, the corporation in question and each of the banks for which it performs bank services are subject to section 5 of the Bank Service Corporation Act. That section, which requires the furnishing of certain assurances to the appropriate Federal supervisory agency in connection with the performance of bank

services for a bank, is applicable whether such services are performed by a bank service corporation or by others.

(4) Section 4(a)(1) of the Bank Holding Company Act prohibits the acquisition by a bank holding company of "direct or indirect ownership or control" of shares of a nonbanking company, subject to certain exceptions. Section 4(c)(1) of the Act exempts from section 4(a)(1) shares of a company engaged "solely in the business of furnishing services to or performing services for" its bank holding company or subsidiary banks thereof. Assuming that the bank services performed by the corporation in question are "services" of the kinds contemplated by section 4(c)(1) of the Bank Holding Company Act (as would be true, for example, of the electronic data processing of deposit accounts), the holding company's ownership of the corporation's shares in the situation described above clearly is permissible under that section of the Act.

(c) *Bank service corporation owned by holding company subsidiaries and serving also other banks.* (1) The other question concerns the applicability of the Bank Service Corporation Act and the Bank Holding Company Act in the case of a corporation, all the stock of which is owned either by a bank holding company and its subsidiary banks together or by the subsidiary banks alone, which is engaged in performing "bank services", as defined in section 1(b) of the Bank Service Corporation Act, for the subsidiary banks and for other banks, as well.

(2) In contrast to the situation under paragraph (b) of this section, the corporation in this case is a "bank service corporation" within the meaning of section 1(c) of the Bank Service Corporation Act because of the ownership by each of the subsidiary banks of a part of the corporation's stock. This stock ownership is one of the important facts differentiating this case from the first one. Being a bank service corporation, the corporation in question is subject to section 3 of the Act concerning applications to bank service corporations by competitive banks for bank services, and to section 4 forbidding a bank service corporation from engaging in any activity other than the performance of bank services for banks. Section 5, mentioned previously and relating to "assurances", also is applicable in this case.

(3) The other important difference between this case and the situation in paragraph (b) of this section is that here the bank service corporation performs services for nonsubsidiary banks, as well as for subsidiary banks. This is permissible because section 2(a) of the Bank Service Corporation Act, which authorizes any two or more banks to invest limited amounts in a bank service corporation, removes all limitations and prohibitions of Federal law exclusively relating to banks that otherwise would prevent any such investment. From the legislative history of section 2(a), it is clear that section 6 of the Bank Holding Company Act is among the limitations and prohibitions so removed. But for such removal, section 6(a)(1) of that Act would make it unlawful for any of the subsidiary banks of the bank holding company in question to own stock in the bank service corporation subsidiary of the holding company, as the exemption in section 6(b)(1) would not apply because of the servicing by the bank service corporation of nonsubsidiary banks.

(4) Because the bank service corporation referred to in the question is serving banks other than the subsidiary banks, the bank holding company is not exempt under section 4(c)(1) of the Bank Holding Company Act from the prohibition of acquisition of nonbanking interests in section 4(a)(1) of that Act. The bank holding company, however, is entitled to the benefit of the exemption in section 4(c)(4) of the Act. That section exempts from section 4(a) "shares which are of the kinds and amounts eligible for investment by National banking associations under the provisions of section 5136 of the Revised Statutes". Section 5136 provides, in part, that: "Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation." As the provisions of section 2(a)

of the Bank Service Corporation Act and its legislative history make it clear that shares of a bank service corporation are of a kind eligible for investment by national banks under section 5136, it follows that the direct or indirect ownership on control of such shares by a bank holding company are permissible within the amount limitation discussed in paragraph (d) of this section.

(d) *Limit on investment by bank holding company system in stock of bank service corporation.* (1) In the situation presented by paragraph (c) the bank holding company clearly owns or controls, directly or indirectly, all of the stock of the bank service corporation. The remaining question, therefore, is whether the total direct and indirect investment of the bank holding company in the bank service corporation exceeds the amount permissible under the Bank Holding Company Act.

(2) The effect of sections 4(a)(1) and 4(c)(4) of the Bank Holding Company Act is to limit the amount of shares of a bank service corporation that a bank holding company may own or control, directly or indirectly, to the amount eligible for investment by a national bank, as previously indicated. Under section 2(a) of the Bank Service Corporation Act, the amount of shares of a bank service corporation eligible for investment by a national bank may not exceed "10 per centum [of the bank's] * * * paid-in and unimpaired capital and unimpaired surplus".

(3) The Board's view is that this aspect of the matter should be determined in accordance with the principles set forth in § 225.111, as revised (27 FR 12671), involving the application of sections 4(a)(1) and 4(c)(4) of the Bank Holding Company Act in the light of section 302(b) of the Small Business Investment Act limiting the amount eligible for investment by a national bank in the shares of a small business investment company to two percent of the bank's "capital and surplus".

(4) Except for the differences in the percentage figures, the investment limitation in section 302(b) of the Small Business Investment Act is essentially the same as the investment limitation in section 2(a) of the Bank Service Corporation Act since, as an accounting matter and for the purposes under consideration, "capital and surplus" may be regarded as equivalent in meaning to "paid-in and unimpaired capital and unimpaired surplus." Accordingly, the maximum permissible investment by a bank holding company system in the stock of a bank service corporation should be determined in accordance with the formula prescribed in § 222.111.

[27 FR 12918, Dec. 29, 1962. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.118 Computer services for customers of subsidiary banks.

(a) The question has been presented to the Board of Governors whether a wholly-owned nonbanking subsidiary ("service company") of a bank holding company, which is now exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 ("the Act") because its sole business is the providing of services for the holding company and the latter's subsidiary banks, would lose its exempt status if it should provide data processing services for customers of the subsidiary banks.

(b) The Board understood from the facts presented that the service company owns a computer which it utilizes to furnish data processing services for the subsidiary banks of its parent holding company. Customers of these banks have requested that the banks provide for them computerized billing, accounting, and financial records maintenance services. The banks wish to utilize the computer services of the service company in providing these and other services of a similar nature. It is proposed that, in each instance where a subsidiary bank undertakes to provide such services, the bank will enter into a contract directly with the customer and then arrange to have the service company perform the services for it, the bank. In no case will the service company provide services for anyone other than its affiliated banks. Moreover, it will not hold itself out as, nor will its parent corporation or affiliated banks represent it to be, authorized or willing to provide services for others.

(c) Section 4(c)(1) of the Act permits a holding company to own shares in "any company engaged solely * * * in the business of furnishing services to or performing services for such holding company and banks with respect to which it is a bank holding company * * *." The Board has ruled heretofore that the term "services" as used in section 4(c)(1) is to be read as relating to those services (excluding "closely related" activities of "a financial, fiduciary, or insurance nature" within the meaning of section 4(c)(6)) which a bank itself can provide for its customers (§ 225.104). A determination as to whether a particular service may legitimately be rendered or performed by a bank for its customers must be made in the light of applicable Federal or State statutory or regulatory provisions. In the case of a State-chartered bank, the laws of the State in which the bank operates, together with any interpretations thereunder rendered by appropriate bank authorities, would govern the right of the bank to provide a particular service. In the case of a national bank, a similar determination would require reference to provisions of Federal law relating to the establishment and operation of national banks, as well as to pertinent rulings or interpretations promulgated thereunder.

(d) Accordingly, on the assumption that all of the services to be performed are of the kinds that the holding company's subsidiary banks may render for their customers under applicable Federal or State law, the Board concluded that the rendition of such services by the service company for its affiliated banks would not adversely affect its exempt status under section 4(c)(1) of the Act.

(e) In arriving at the above conclusion, the Board emphasized that its views were premised explicitly upon the facts presented to it, and particularly its understanding that banks are permitted, under applicable Federal or State law to provide the proposed computer services. The Board emphasized also that in respect to the service company's operations, there continues in effect the requirement under section 4(c)(1) that the service company engage solely in the business of furnishing services to or performing services for the bank holding company and its subsidiary banks. The Board added that any substantial change in the facts that had been presented might require re-examination of the service company's status under section 4(c)(1).

[29 FR 12361, Aug. 28, 1964. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.121 Acquisition of Edge corporation affiliate by State member banks of registered bank holding company.

(a) The Board has been asked whether it is permissible for the commercial banking affiliates of a bank holding company registered under the Bank Holding Company Act of 1956, as amended, to acquire and hold the shares of the holding company's Edge corporation subsidiary organized under section 25(a) of the Federal Reserve Act.

(b) Section 9 of the Bank Holding Company Act amendments of 1966 (Pub. L. 89-485, approved July 1, 1966) repealed section 6 of the Bank Holding Company Act of 1956. That rendered obsolete the Board's interpretation of section 6 that was published in the March 1966 Federal Reserve Bulletin, page 339 (§ 225.120). Thus, so far as Federal Banking law applicable to State member banks is concerned, the answer to the foregoing question depends on the provisions of section 23A of the Federal Reserve Act, as amended by the 1966 amendments to the Bank Holding Company Act. By its specific terms, the provisions of section 23A do not apply to an affiliate organized under section 25(a) of the Federal Reserve Act.

(c) Accordingly, the Board concludes that, except for such restrictions as may exist under applicable State law, it would be legally permissible by virtue of paragraph 20 of section 9 of the Federal Reserve Act for any or all of the State member banks that are affiliates of a registered bank holding company to acquire and hold shares of the Edge corporation subsidiary of the bank holding company within the amount limitation in the last sentence of paragraph 12 of section 25(a) of the Federal Reserve Act.

(12 U.S.C. 24, 248, 335, 371c, 611, 618)

[31 FR 10263, July 29, 1966. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.122 Bank holding company ownership of mortgage companies.

(a) The Board of Governors recently considered whether a bank holding may acquire, either directly or through a subsidiary, the stock of a so-called "mortgage company" that would be operated on the following basis: The company would solicit mortgage loans on behalf of a bank in the holding company system, assemble credit information, make property inspections and appraisals, and secure title information. The company would also participate in the preparation of applications for mortgage loans, which it would submit, together with recommendations with respect to action thereon, to the bank, which alone would decide whether to make any or all of the loans requested. The company would in addition solicit investors to purchase mortgage loans from the bank and would seek to have such investors contract with the bank for the servicing of such loans.

(b) Under section 4 of the Bank Holding Company Act (12 U.S.C. 1843), a bank holding company is generally prohibited from acquiring "direct or indirect ownership" of stock of nonbanking corporations. The two exceptions principally involved in the question presented are with respect to (1) stock that is eligible for investment by a national bank (section 4(c)(5) of the Act) and (2) shares of a company "furnishing services to or performing services for such bank holding company or its banking subsidiaries" (section 4(c)(1)(C) of the Act).

(c) The Board has previously indicated its view that a national bank is forbidden by the so-called "stock-purchase prohibition" of paragraph "Seventh" of section 5136 of the Revised Statutes (12 U.S.C. 24) to purchase "for its own account * * * any shares of stock of any corporation" except (1) to the extent permitted by specific provisions of Federal law or (2) as comprised within the concept of "such incidental powers as shall be necessary to carry on the business of banking" referred to in the first sentence of said paragraph "Seventh". There is no specific statutory provision authorizing a national bank to purchase stock in a mortgage company, and in the Board's view such purchase may not properly be regarded as authorized under the "incidental powers" clause. (See 1966 Federal Reserve Bulletin 1151; 12 CFR 208.119.) Accordingly, a bank holding company may not acquire stock in a mortgage company on the basis of the section 4(c)(5) exemption.

(d) However, the Board does not believe that such conclusion prejudices consideration of the question whether such a company is within the section 4(c)(1)(C) "servicing exemption". The basic purpose of section 4 of the Act is to confine a bank holding company's activities to the management and control of banks. In determining whether an activity in which a bank could itself engage is within the servicing exemption, the question is simply whether such activity may appropriately be considered as "furnishing services to or performing services for" a bank.

(e) As indicated in the Board's interpretation published in the 1958 Federal Reserve Bulletin at page 431 (12 CFR 225.104), the legislative history of the servicing exemption indicates that it includes the following activities: "auditing, appraising, investment counselling" and "advertising, public relations, developing new business, organization, operations, preparing tax returns, and personnel". The legislative history further indicates that some other activities also are within the scope of the exemption. However, the types of servicing permitted under such exemption must be distinguished from activities of a "financial fiduciary, or insurance nature", such as those that might be considered for possible exemption under section 4(c)(8) of the Act.

(f) In considering the interrelation of these exemptions in the light of the purpose of the prohibition against bank holding company interests in nonbanking organizations, the Board has concluded that the appropriate test for determining whether a mortgage company may be considered as within the servicing exemption is whether the company will perform as principal any banking activities—such as receiving deposits, paying checks, extending credit, conducting a trust department, and the like. In other words, if the mortgage company is to act merely as an adjunct to a bank for the purpose of facilitating the banks operations, the company may appropriately be considered as within the scope of the servicing exemption.[1]

(g) On this basis the Board concluded that, insofar as the Bank Holding Company Act is concerned, a bank holding company may acquire, either directly or through a subsidiary, the stock of a mortgage company whose functions are as described in the question presented. On the other hand, in the Board's view, a bank holding company may not acquire, on the basis of the servicing exemption, a mortgage company whose functions include such activities as extending credit for its own account, arranging interim financing, entering into mortgage service contracts on a fee basis, or otherwise performing functions other than solely on behalf of a bank.

(12 U.S.C. 248)

[32 FR 15004, Oct. 3, 1967, as amended at 35 FR 19662, Dec. 29, 1970. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.123 Activities closely related to banking.

(a) Effective June 15, 1971, the Board of Governors has amended § 225.4(a) of Regulation Y to implement its regulatory authority under section 4(c)(8) of the Bank Holding Company Act. In some respects activities determined by the Board to be closely related to banking are described in general terms that will require interpretation from time to time. The Board's views on some questions that have arisen are set forth below.

(b) Section 225.4(a) states that a company whose ownership by a bank holding company is authorized on the basis of that section may engage solely in specified activities. That limitation refers only to activities the authority for which depends on section 4(c)(8) of the Act. It does not prevent a holding company from establishing one subsidiary to engage, for example, in activities specified in § 225.4(a) and also in activities that fall within the scope of section 4(c)(1)(C) of the Act—the "servicing" exemption.

(c) The amendments to § 225.4(a) do not apply to restrict the activities of a company previously approved by the Board on the basis of section 4(c)(8) of the Act. Activities of a company authorized on the basis of section 4(c)(8) either before the 1970 Amendments or pursuant to the amended § 225.4(a) may be shifted in a corporate reorganization to another company within the holding company system without complying with the procedures of § 225.4(b), as long as all the activities of such company are permissible under one of the exemptions in section 4 of the Act.

(d) Under the procedures in § 225.4(a)(c), a holding company that wishes to change the location at which it engages in activities authorized pursuant to § 225.4(a) must publish notice in a newspaper of general circulation in the community to be served. The Board does not regard minor changes in location as within the coverage of that requirement. A move from one site to another within a 1-mile radius would constitute such a minor change if the new site is in the same State.

(e) *Data processing:* In providing packaged data processing and transmission services for banking, financial and economic data for installation on the premises of the customer, as authorized by § 225.4(a)(8)(ii), a bank holding company should limit its activities to providing facilities that perform banking functions, such as check collection, or other similar functions for customers that are depository or other similar institutions, such as mortgage companies. In addition, the Board regards the following as incidental activities necessary to carry on the permissible activities in this area:

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[1] Insofar as the 1958 interpretation referred to above suggested that the branch banking laws are an appropriate general test for determining the scope of the servicing exemption, such interpretation is hereby modified. In view of the different purposes to be served by the branch banking laws and by section 4 of the Bank Holding Company Act, the Board has concluded that basing determinations under the latter solely on the basis of determinations under the former is inappropriate.

(1) Providing excess capacity, not limited to the processing or transmission of banking, financial or economic data on data processing or transmission equipment or facilities used in connection with permissible data processing and data transmission activities, where:

(A) Equipment is not purchased solely for the purpose of creating excess capacity;

(B) Hardware is not offered in connection therewith; and

(C) Facilities for the use of the excess capacity do not include the provision of any software, other than systems software (including language), network communications support, and the operating personnel and documentation necessary for the maintenance and use of these facilities.

(2) Providing by-products of permissible data processing and data transmission activities, where not designed, or appreciably enhanced, for the purpose of marketability.

(3) Furnishing any data processing service upon request of a customer if such data processing service is not otherwise reasonably available in the relevant market area; and

(4) Supplying formatting for computer output microfilm and supplying computer output microfilm only as an output option for data otherwise being permissibly processed by the holding company system.

In order to eliminate or reduce to an insignificant degree any possibility of unfair competition where services, facilities, by-products or excess capacity are provided by a bank holding company's nonbank subsidiary or related entity, the entity providing the services, facilities, by-products and/or excess capacity should have separate books and financial statements, and should provide these books and statements to any new or renewal customer requesting financial data. Consolidated or other financial statements of the bank holding company should not be provided unless specifically requested by the customer.

(Interprets and applies 12 U.S.C. 1843 (c)(8))

[Reg. Y, 36 FR 10778, June 3, 1971, as amended at 36 FR 11806, June 19, 1971. Redesignated at 36 FR 21666, Nov. 12, 1971 and amended at 40 FR 13477, Mar. 27, 1975; 47 FR 37372, Aug. 26, 1982]

§ 225.124 Foreign bank holding companies.

(a) Effective December 1, 1971, the Board of Governors has added a new § 225.4(g) to Regulation Y implementing its authority under section 4(c)(9) of the Bank Holding Company Act. The Board's views on some questions that have arisen in connection with the meaning of terms used in § 225.4(g) are set forth in paragraphs (b) through (g) of this section.

(b) The term "activities" refers to nonbanking activities and does not include the banking activities that foreign banks conduct in the United States through branches or agencies licensed under the banking laws of any State of the United States or the District of Columbia.

(c) A company (including a bank holding company) will not be deemed to be engaged in "activities" in the United States merely because it exports (or imports) products to (or from) the United States, or furnishes services or finances goods or services in the United States, from locations outside the United States. A company is engaged in "activities" in the United States if it owns, leases, maintains, operates, or controls any of the following types of facilities in the United States:

(1) A factory,

(2) A wholesale distributor or purchasing agency,

(3) A distribution center,

(4) A retail sales or service outlet,

(5) A network of franchised dealers,

(6) A financing agency, or

(7) Similar facility for the manufacture, distribution, purchasing, furnishing, or financing of goods or services locally in the United States.

A company will not be considered to be engaged in "activities" in the United States if its products are sold to independent importers, or are distributed through independent warehouses, that are not controlled or franchised by it.

(d) In the Board's opinion, section 4 (a)(1) of the Bank Holding Company Act applies to ownership or control of shares of stock as an investment and does not apply to ownership or control of shares of stock in the capacity of an underwriter or dealer in securities. Underwriting or dealing in shares of stock are nonbanking activities prohibited to bank holding companies by section 4(a)(2) of the Act, unless otherwise exempted. Under § 225.4(g) of Regulation Y, foreign bank holding companies are exempt from the prohibitions of section 4 of the Act with respect to their activities outside the United States; thus foreign bank holding companies may underwrite or deal in shares of stock (including shares of United States issuers) to be distributed outside the United States, provided that shares so acquired are disposed of within a reasonable time.

(e) A foreign bank holding company does not "indirectly" own voting shares by reason of the ownership or control of such voting shares by any company in which it has a noncontrolling interest. A foreign bank holding company may, however, "indirectly" control such voting shares if its noncontrolling interest in such company is accompanied by other arrangements that, in the Board's judgment, result in control of such shares by the bank holding company. The Board has made one exception to this general approach. A foreign bank holding company will be considered to indirectly own or control voting shares of a bank if that bank holding company acquires more than 5 percent of any class of voting shares of another bank holding company. A bank holding company may make such an acquisition only with prior approval of the Board.

(f) A company is "indirectly" engaged in activities in the United States if any of its subsidiaries (whether or not incorporated under the laws of this country) is engaged in such activities. A company is not "indirectly" engaged in activities in the United States by reason of a noncontrolling interest in a company engaged in such activities.

(g) Under the foregoing rules, a foreign bank holding company may have a noncontrolling interest in a foreign company that has a U.S. subsidiary (but is not engaged in the securities business in the United States) if more than half of the foreign company's consolidated assets and revenues are located and derived outside the United States. For the purpose of such determination, the assets and revenues of the United States subsidiary would be counted among the consolidated assets and revenues of the foreign company to the extent required or permitted by generally accepted accounting principles in the United States. The foreign bank holding company would not, however, be permitted to "indirectly" control voting shares of the said U.S. subsidiary, as might be the case if there are other arrangements accompanying its noncontrolling interest in the foreign parent company that, in the Board's judgment, result in control of such shares by the bank holding company.

(Interprets and applies 12 U.S.C. 1843 (a) (1), (2), and (c)(9))

[Reg. Y, 36 FR 21808, Nov. 16, 1971]

§ 225.125 Investment adviser activities.

(a) Effective February 1, 1972, the Board of Governors amended § 225.4(a) of Regulation Y to add "serving as investment adviser, as defined in section 2(a)(20) of the Investment Company Act of 1940, to an investment company registered under that Act" to the list of activities it has determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. During the course of the Board's consideration of this amendment several questions arose as to the scope of such activity, particularly in view of certain restrictions imposed by sections 16, 20, 21, and 32 of the Banking Act of 1933 (12 U.S.C. 24, 377, 378, 78) (sometimes referred to hereinafter as the "Glass-Steagall Act provisions") and the U.S. Supreme Court's decision in Investment Company Institute v. Camp, 401 U.S. 617 (1971). The Board's views with respect to some of these questions are set forth below.

(b) It is clear from the legislative history of the Bank Holding Company Act Amendments of 1970 (84 Stat. 1760) that the Glass-Steagall Act provisions were not intended to be affected thereby. Accordingly, the Board regards the Glass-Steagall Act provisions and the Board's prior interpretations thereof as applicable to a holding company's activities as an investment adviser. Consistently with the spirit and purpose of the Glass-Steagall Act, this interpretation applies to all bank holding companies registered under the Bank Holding Company Act irrespective of whether they have subsidiaries that are member banks.

(c) Under § 225.4(a)(5), as amended, bank holding companies (which term, as used herein, includes both their bank and nonbank subsidiaries) may, in accordance with the provisions of § 225.4 (b), act as investment advisers to various types of investment companies, such as "open-end" investment companies (commonly referred to as "mutual funds") and "closed-end" investment companies. Briefly, a mutual fund is an investment company which, typically, is continuously engaged in the issuance of its shares and stands ready at any time to redeem the securities as to which it is the issuer; a closed-end investment company typically does not issue shares after its initial organization except at infrequent intervals and does not stand ready to redeem its shares.

(d) The Board intends that a bank holding company may exercise all functions that are permitted to be exercised by an "investment adviser" under the Investment Company Act of 1940, except to the extent limited by the Glass-Steagall Act provisions, as described, in part, hereinafter.

(e) The Board recognizes that presently most mutual funds are organized, sponsored and managed by investment advisers with which they are affiliated and that their securities are distributed to the public by such affiliated investment advisers, or subsidiaries or affiliates thereof. However, the Board believes that (1) the Glass-Steagall Act provisions do not permit a bank holding company to perform all such functions, and (2) it is not necessary for a bank holding company to perform all such functions in order to engage effectively in the described activity.

(f) In the Board's opinion, the Glass-Steagall Act provisions, as interpreted by the U.S. Supreme Court, forbid a bank holding company to sponsor, organize or control a mutual fund. However, the Board does not believe that such restrictions apply to closed-end investment companies as long as such companies are not primarily or frequently engaged in the issuance, sale and distribution of securities. In no case, however, should a bank holding company act as investment adviser to an investment company which has a name that is similar to, or a variation of, the name of the holding company or any of its subsidiary banks.

(g) In view of the potential conflicts of interests that may exist, a bank holding company and its bank and nonbank subsidiaries should not (1) purchase for their own account securities of any investment company for which the bank holding company acts as investment adviser; (2) purchase in their sole discretion, any such securities in a fiduciary capacity (including as managing agent); (3) extend credit to any such investment company; or (4) accept the securities of any such investment company as collateral for a loan which is for the purpose of purchasing securities of the investment company.

(h) A bank holding company should not engage, directly or indirectly, in the sale or distribution of securities of any investment company for which it acts as investment adviser. Prospectuses or sales literature should not be distributed by the holding company, nor should any such literature be made available to the public at any offices of the holding company. In addition, officers and employees of bank subsidiaries should be instructed not to express any opinion with respect to advisability of purchase of securities of any investment company for which the bank holding company acts as investment adviser. Customers of banks in a bank holding company system who request information on an unsolicited basis regarding any investment company for which the bank holding company acts as investment adviser may be furnished the name and address of the fund and its underwriter or distributing company, but the names of bank customers should not be furnished by the bank holding company to the fund or its distributor. Further, a bank holding company should not act as investment adviser to a mutual fund which has offices in any building which is likely to be identified in the public's mind with the bank holding company.

(i) Acting in such capacities as registrar, transfer agent, or custodian for an investment company is not a selling activity and is permitted under § 225.4(a)(4) of Regulation Y. However, in view of potential conflicts of interests, a bank holding company which acts both as custodian and investment adviser for an investment company should exercise care to maintain at a minimal level demand deposit accounts of the investment company which are placed with a bank affiliate and should not invest cash funds of the investment company in time deposit accounts (including certificates of deposit) of any bank affiliate.

(Interprets and applies 12 U.S.C. 1843(c)(8))

[Reg. Y, 37 FR 1464, Jan. 29, 1972]

§ 225.126 Activities not closely related to banking.

Pursuant to section 4(c)(8) of the Bank Holding Company Act and § 225.4(a) of Regulation Y, the Board of Governors has determined that the following activities are not so closely related to banking or managing or controlling banks as to be a proper incident thereto:

(a) Insurance premium funding—that is, the combined sale of mutual funds and insurance.

(b) Underwriting life insurance that is not sold in connection with a credit transaction by a bank holding company, or a subsidiary thereof.

(c) Real estate brokerage (see 1972 Fed. Res. Bulletin 428).

(d) Land development (see 1972 Fed. Res. Bulletin 429).

(e) Real estate syndication.

(f) Management consulting (see 1972 Fed. Res. Bulletin 571).

(g) Property management (see 1972 Fed. Res. Bulletin 652).

(h) Operation of savings and loan associations.[1] (See 1972 Fed. Res. Bulletin 717.)

[Reg. Y, 37 FR 20329, Sept. 29, 1972; 37 FR 21938, Oct. 17, 1972]

§ 225.127 Investment in corporations or projects designed primarily to promote community welfare.

(a) Under § 225.4(a)(7) of Regulation Y, a bank holding company may, in accordance with the provisions of § 225.4(b), engage in "making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas." The Board included that activity among those the Board has determined to be so closely related to banking or managing or controlling banks as be a proper incident thereto, in order to permit bank holding companies to fulfill their civic responsibilities. As indicated hereinafter in this interpretation, the Board intends § 225.4(a)(7) to enable bank holding companies to take an active role in the quest for solutions to the Nation's social problems. Although the interpretation primarily focuses on low- and moderate-income housing, it is not intended to limit projects under § 225.4(a)(7) to that area. Other investments primarily designed to promote community welfare are considered permissable, but have not been defined in order to provide bank holding companies flexibility in approaching community problems. For example, bank holding companies may utilize this flexibility to provide new and creative approaches to the promotion of employment opportunities for low-income persons. Bank holding companies possess a unique combination of financial and managerial resources making them particularly suited for a meaningful and substantial role in remedying our social ills. Section 225.4(a)(7) is intended to provide an opportunity for them to assume such a role.

(b) Under the authority of § 225.4(a)(7), a bank holding company may invest in community development corporations established pursuant to Federal or State law. A bank holding company may also participate in other civic projects, such as a municipal parking facility sponsored by a local civic organization as a means to promote greater public use of the community's facilities.

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[1] As indicated in its statement announcing this action, published in the FEDERAL REGISTER of August 10, 1972 (37 FR 16133), this activity may be the subject of further consideration by the Board.

(c) Within the category of permissible investments under § 225.4(a)(7) are investments in projects to construct or rehabilitate multifamily low- or moderate-income housing with respect to which a mortgage is insured under section 221(d)(3), 221(d)(4), or 236 of the National Housing Act (12 U.S.C. 1701) and investments in projects to construct or rehabilitate low- or moderate-income housing which is financed or assisted by direct loan, tax abatement, or insurance under provisions of State or local law, similar to the aforementioned Federal programs, provided that, with respect to all such projects the owner is, by statute, regulation, or regulatory authority, limited as to the rate of return on his investment in the project, as to rentals or occupancy charges for units in the project, and in such other respects as would be a "limited dividend corporation" (as defined by the Secretary of Housing and Urban Development).

(d) Investments in other projects that may be considered to be designed primarily to promote community welfare include but are not limited to: (1) Projects for the construction or rehabilitation of housing for the benefit of persons of low- or moderate-income, (2) projects for the construction or rehabilitation of ancillary local commercial facilities necessary to provide goods or services principally to persons residing in low- or moderate-income housing, and (3) projects designed explicitly to create improved job opportunities for low- or moderate-income groups (for example, minority equity investments, on a temporary basis, in small or medium-sized locally-controlled businesses in low-income urban or other economically depressed areas). In the case of de novo projects, the copy of the notice with respect to such other projects which is to be furnished to Reserve Banks in accordance with the provisions of § 225.4(b)(1) should be accompanied by a memorandum which demonstrates that such projects meet the objectives of § 225.4(a)(7).

(e) Investments in corporations or projects organized to build or rehabilitate high-income housing, or commercial, office, or industrial facilities that are not designed explicitly to create improved job opportunities for low-income persons shall be presumed not to be designed primarily to promote community welfare, unless there is substantial evidence to the contrary, even though to some extent the investment may benefit the community.

(Interprets and applies 12 U.S.C. 1843(c)(8))

[Reg. Y, 37 FR 11316, June 7, 1972; 37 FR 13336, July 7, 1972]

§ 225.128 Insurance agency activities.

(a) Effective September 1, 1971, the Board of Governors amended § 225.4(a) of Regulation Y to add specified insurance agency activities to the list of activities the Board has determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. In the course of administering this regulation, a number of questions have arisen concerning the scope and terms of the Board's regulation. The Board's views on some of these questions are set forth below.

(b) *Section 225.4(a)(9)(i)(a): Insurance "directly related to an extension of credit by a bank or a bank-related firm"*. (1) This provision is designed to permit the sale, by a bank holding company system, of insurance that supports the lending transactions of a bank or bank-related firm in the holding company system. The Board regards the sale of insurance as directly related to an extension of credit by a bank or bank-related firm where (i) the insurance assures repayment of an extension of credit by the holding company system in the event of death or disability of the borrower (for example, credit life and credit accident and health insurance); or (ii) the insurance protects collateral in which the bank or bank-related firm has a security interest as a result of its extension of credit; or (iii) the insurance is other insurance which is sold to individual borrowers in conjunction with or as part of an insurance package (as a matter of general practice) with insurance protecting the collateral in which a bank or bank-related firm has a security interest as a result of its extension of credit. Examples that fall within subdivision (iii) of this subparagraph are: (*a*) Liability insurance sold in conjunction with insurance relating to physical damage of an automobile when the purchase of such automobile is financed by a bank or bank-related firm; and (*b*) a homeowner's insurance policy with respect to a residence mortgaged to a bank or bank-related firm.

(2) Other types of insurance may be directly related to an extension of credit. A bank holding company applying to engage in the sale of such other types should furnish information showing that such insurance is so directly related.

(3) The Board generally regards insurance protecting collateral where the security interest of a bank or bank-related firm was obtained by purchase rather than by a direct extension of credit by the holding company system as not being directly related to an extension of credit by a bank or bank-related firm. However, if such security interests are purchased on a continuing basis from a firm or an individual and the interval between the creation of the security interest and its subsequent purchase is minimal, the Board may regard such purchase as an extension of credit. Full details of the transactions should be provided to support a holding company's contention that such insurance sales are directly related to an extension of credit.

(c) *Section 225.4(a)(9)(i)(b): Insurance "directly related to the provision of other financial services by a bank or * * * bank-related firm".* This provision is designed to permit the sale by a bank holding company system of insurance in connection with bank-related services (rendered by a member of the holding company system) other than an extension of credit. Among the types of insurance the Board regards as directly related to such services are: (1) Insurance against loss of securities held for safekeeping; (2) insurance for valuables in a safe deposit box; (3) life insurance equal to the difference between the maturity value of a deposit plan for periodic deposits over a specified term and the balance in the account at the time of the depositor's death; (4) in connection with mortgage loan servicing that is provided by a bank or bank-related firm, insurance on the mortgaged property and/or insurance on the mortgagor to the extent of the outstanding balance of the credit extension, *Provided*, That the mortgagee is a beneficiary under such types of insurance policies; and (5) insurance directly related to the provision of trust services if the sale of such insurance is permitted by the trust instruments and under State law.

(Interprets and applies 12 U.S.C. 1843(c)(8))

[Reg. Y, 37 FR 18520, Sept. 13, 1972, as amended at 46 FR 38495, July 28, 1981]

§ 225.129 Activities closely related to banking.

Courier activities. The Board's amendment of § 225.4(a), which adds courier services to the list of closely related activities is intended to permit holding companies to transport time critical materials of limited intrinsic value of the types utilized by banks and bank-related firms in performing their business activities. Such transportation activities are of particular importance in the check clearing process of the banking system, but are also important to the performance of other activities, including the processing of financially-related economic data. The authority is not intended to permit holding companies to engage generally in the provision of transportation services.

During the course of the Board's proceedings pertaining to courier services, objections were made that courier activities were not a proper incident to banking because of the possibility that holding companies would or had engaged in unfair competitive practices. The Board believes that adherence to the following principles will eliminate or reduce to an insignificant degree any possibility of unfair competition:

a. A holding company courier subsidiary established under section 4(c)(8) should be a separate, independent corporate entity, not merely a servicing arm of a bank.

b. As such, the subsidiary should exist as a separate, profit-oriented operation and should not be subsidized by the holding company system.

c. Services performed should be explicitly priced, and shall not be paid for indirectly, for example, on the basis of deposits maintained at or loan arrangements with affiliated banks.

Accordingly, entry of holding companies into courier activities on the basis of section 4(c)(8) will be conditioned as follows:

1. *The courier subsidiary shall perform services on an explicit fee basis and shall be structured as an individual profit center designed to be operated on a profitable basis.* The Board may regard operating losses sustained over an extended period as being inconsistent with continued authority to engage in courier activities.

2. *Courier services performed on behalf of an affiliate's customer (such as the carriage of incoming cash letters) shall be paid for by the customer. Such payments shall not be made indirectly, for example, on the basis of imputed earnings on deposits maintained at or of loan arrangements with subsidiaries of the holding company.* Concern has also been expressed that bank-affiliated courier services will be utilized to gain a competitive advantage over firms competing with other holding company affiliates. To reduce the possibility that courier affiliates might be so employed, the Board will impose the following third condition:

3. *The courier subsidiary shall, when requested by any bank or any data processing firm providing financially-related data processing services which firm competes with a banking or data processing subsidiary of Applicant, furnish comparable service at comparable rates, unless compliance with such request would be beyond the courier subsidiary's practical capacity.* In this regard, the courier subsidiary should make known to the public its minimum rate schedule for services and its general pricing policies thereto. The courier subsidiary is also expected to maintain for a reasonable period of time (not less than two years) each request denied with the reasons for such denial.

[Reg. Y, 38 FR 32126, Nov. 21, 1973, as amended at 40 FR 36309, Aug. 20, 1975]

§ 225.130 Issuance and sale of short-term debt obligations by bank holding companies.

For text of interpretation, see § 250.221 of this chapter.

[Reg. Y, 38 FR 35231, Dec. 26, 1973]

§ 225.131 Activities closely related to banking.

(a) *Bank management consulting advice.* The Board's amendment of § 225.4(a), which adds bank management consulting advice to the list of closely related activities, described in general terms the nature of such activity. This interpretation is intended to explain in greater detail certain of the terms in the amendment.

(b) It is expected that bank management consulting advice would include, but not be limited to, advice concerning: Bank operations, systems and procedures; computer operations and mechanization; implementation of electronic funds transfer systems; site planning and evaluation; bank mergers and the establishment of new branches; operation and management of a trust department; international banking; foreign exchange transactions; purchasing policies and practices; cost analysis, capital adequacy and planning; auditing; accounting procedures; tax planning; investment advice (as authorized in § 225.4(a)(5)); credit policies and administration, including credit documentation, evaluation, and debt collection; product development, including specialized lending provisions; marketing operations, including research, market development and advertising programs; personnel operations, including recruiting, training, evaluation and compensation; and security measures and procedures.

(c) In permitting bank holding companies to provide management consulting advice to nonaffiliated "banks", the Board intends such advice to be given only to an institution that both accepts deposits that the depositor has a legal right to withdraw on demand and engages in the business of making commercial loans. It is also intended that such management consulting advice may be provided to the "operations subsidiaries" of a bank, since such subsidiaries perform functions that a bank is empowered to perform directly at locations at which the bank is authorized to engage in business (§ 250.141 of this chapter).

(d) Although a bank holding company providing management consulting advice is prohibited by the regulation from owning or controlling, directly or indirectly, any equity securities in a client bank, this limitation does not apply to shares of a client bank acquired, directly or indirectly, as a result of a default on a debt previously contracted. This limitation is also inapplicable to shares of a client bank acquired by a bank holding company, directly or indirectly, in a fiduciary capacity: *Provided,* That the bank holding company or its subsidiary does not have sole discretionary authority to vote such shares or shares held with sole voting rights constitute not more than five percent of the outstanding voting shares of a client bank.

[39 FR 8318, Mar. 5, 1974; 39 FR 21120, June 19, 1974]

§ 225.132 Acquisition of assets.

(a) From time to time questions have arisen as to whether and under what circumstances a bank holding company engaged in nonbank activities, directly or indirectly through a subsidiary, pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1843(c)(3)), may acquire the assets and employees of another company, without first obtaining Board approval pursuant to section 4(c) (8) and the Board's Regulation Y (12 CFR 225.4(b)).

(b) In determining whether Board approval is required in connection with the acquisition of assets, it is necessary to determine (a) whether the acquisition is made in the ordinary course of business[1] or (b) whether it constitutes the acquisition, in whole or in part, of a going concern.[2]

(c) The following examples illustrate transactions where prior Board approval will generally be required:

(1) The transaction involves the acquisition of all or substantially all of the assets of a company, or a subsidiary, division, department or office thereof.

(2) The transaction involves the acquisition of less than "substantially all" of the assets of a company, or a subsidiary, division, department or office thereof, the operations of which are being terminated or substantially discontinued by the seller, but such asset acquisition is significant in relation to the size of the same line of nonbank activity of the holding company (e.g., consumer finance mortgage banking, data processing). For purposes of this interpretation, an acquisition would generally be presumed to be significant if the book value of the nonbank assets being acquired exceeds 20 percent of the book value of the nonbank assets of the holding company or nonbank subsidiary comprising the same line of activity.

(3) The transaction involves the acquisition of assets for resale and the sale of such assets is not a normal business activity of the acquiring holding company.

(4) The transaction involves the acquisition of the assets of a company, or a subsidiary, division, department or office thereof, and a major purpose of the transaction is to hire some of the seller's principal employees who are expert, skilled and experienced in the business of the company being acquired.

(d) In some cases it may be difficult, due to the wide variety of circumstances involving possible acquisition of assets, to determine whether such acquisitions require prior Board approval. Bank holding companies are encouraged to contact their local Reserve Bank for guidance where doubt exists as to whether such an acquisition is in the ordinary course of business or an acquisition, in whole or in part, of a going concern.

[39 FR 35128, Sept. 30, 1974]

§ 225.133 Computation of amount invested in foreign corporations under general consent procedures.

For text of this interpretation, see § 211.111 of this subchapter.

[40 FR 43199, Sept. 19, 1975]

§ 225.134 Escrow arrangements involving bank stock resulting in a violation of the Bank Holding Company Act.

(a) In connection with a recent application to become a bank holding company, the Board considered a situation in which shares of a bank were acquired and then placed in escrow by the applicant prior to the Board's approval of the application. The facts indicated that the applicant company had incurred debt for the purpose of acquiring bank shares and immediately after the purchase the shares were transferred to an unaffiliated escrow agent with instructions to retain possession of the shares pending Board action on the company's application to become a bank holding company. The escrow agreement provided that, if the application were approved by the Board, the escrow agent was to return the shares to the applicant company; and, if the application were denied, the escrow agent was to deliver the shares to the applicant company's shareholders upon their assumption of debt originally incurred by the applicant in the acquisition of the bank shares. In addition, the escrow agreement provided that, while the shares were held in escrow, the applicant could not exercise voting or any other ownership rights with respect to those shares.

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[1] Section 225.4(c)(3) of the Board's Regulation Y (12 CFR 225.4(c)(3)) generally prohibits a bank holding company or its subsidiary engaged in activities pursuant to authority of section 4(c)(8) of the Act from being a party to any merger "or acquisition of assets other than in the ordinary course of business" without prior Board approval.

[2] In accordance with the provisions of section 4(c)(8) of the Act and § 225.4(b) of Regulation Y, the acquisition of a going concern requires prior Board approval.

(b) On the basis of the above facts, the Board concluded that the company had violated the prior approval provisions of section 3 of the Bank Holding Company Act ("Act") at the time that it made the initial acquisition of bank shares and that, for purposes of the Act, the company continued to control those shares in violation of the Act. In view of these findings, individuals and bank holding companies should not enter into escrow arrangements of the type described herein, or any similar arrangement, without securing the prior approval of the Board, since such action could constitute a violation of the Act.

(c) While the above represents the Board's conclusion with respect to the particular escrow arrangement involved in the proposal presented, the Board does not believe that the use of an escrow arrangement would always result in a violation of the Act. For example, it appears that a transaction whereby bank shares are placed in escrow pending Board action on an application would not involve a violation of the Act so long as title to such shares remains with the seller during the pendency of the application; there are no other indicia that the applicant controls the shares held in escrow; and, in the event of a Board denial of the application, the escrow agreement provides that the shares would be returned to the seller.

[41 FR 9859, Mar. 8, 1976. Correctly designated at 41 FR 12009, Mar. 23, 1976]

§ 225.135 Acting as underwriter (reinsurer) for credit life and credit accident and health (disability) insurance—assuring continuing public benefits.

(a) Under the provisions of section 4 (c)(8) of the Bank Holding Company Act of 1956, as amended ["Act"] (12 U.S.C. 1843), a bank holding company may acquire shares of any company the activities of which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. In making its determination, the Board is required to consider whether the performance of a particular activity by an affiliate of a holding company can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.

(b) On December 11, 1972, pursuant to this authority, the Board amended its Regulation Y, by adding § 225.4(a)(10), to authorize as a permissible activity for bank holding companies the underwriting of credit life insurance and credit accident and health insurance that is directly related to extensions of credit by the bank holding company system. In authorizing this activity, the Board, in a footnote to § 225.4(a)(10) of Regulation Y (fn. 7), stated:

> To assure that engaging in the underwriting of credit life and credit accident and health insurance can reasonably be expected to be in the public interest, the Board will only approve applications in which an applicant demonstrates that approval will benefit the consumer or result in other public benefits. Normally such a showing would be made by a projected reduction in rates or increase in policy benefits to bank holding company performance of this service.

(c) In the course of considering a recent application, the Board became aware of pending legislation in the applicant's State that, if adopted, would provide new, lower premium rate standards applicable to the sale of such credit-related insurance. Because the applicant had already proposed, as one of the public benefits of its application, that it would offer premium rates below the then-existing State rates generally being charged by others, enactment of the legislation would have had the effect of nullifying the proposed public benefits unless the applicant were to commit to lower its rates, concurrently, so as to assure the continuation of meaningful public benefits. Accordingly, the Board's Order granting the application made clear that the applicant's obligation to offer lower rates was a continuing one.

(d) While the Board does assure that such a public benefit exists at the time of approval of a credit insurance underwriting application, the Board is also concerned that this public benefit be maintained on a *continuing* basis, not only by new applicants, but by those applicants who have heretofore received approval of such applications. In the event that a State's insurance regulations were amended to provide for new premium rate standards that would establish new, and possibly lower, *prima facie* rates, it is possible that the public benefit involved in a previously approved application could be nullified unless the bank holding company, in light of such new premium rate standards, continued to offer this insurance to their customers at reduced rates. The Board believes that without such a continuing public benefit, a bank holding company's continuing to engage in the activity of underwriting credit insurance would be contrary to the requirements of the Act. In order to avoid such a situation, the Board has interpreted section 4(c)(8) of the Act and § 225.4(a)(10) of Regulation Y and its accompanying footnote as imposing a continuing obligation upon all bank holding companies authorized to underwrite such credit insurance pursuant to section 4(c)(8) of the Act and the Board's Regulation Y, to maintain a public benefit such as was anticipated and considered by the Board at the time of the original approval of each application, and was envisioned by the Board when this activity was adopted as a permissible nonbanking activity under section 4(c)(8) of the Act.[1]

[41 FR 22260, June 2, 1976]

§ 225.136 Utilization of foreign subsidiaries to sell long-term debt obligations in foreign markets and to transfer the proceeds to their United States parent(s) for domestic purposes.

For text of this interpretation, see § 211.112 of this subchapter.

[42 FR 752, Jan. 4, 1977]

§ 225.137 Acquisitions of shares pursuant to section 4(c)(6) of the Bank Holding Company Act.

(a) The Board has received a request for an interpretation of section 4(c)(6) of the Bank Holding Company Act ("Act")[2] in connection with a proposal under which a number of bank holding companies would purchase interests in an insurance company to be formed for the purpose of underwriting or reinsuring credit life and credit accident and health insurance sold in connection with extensions of credit by the stockholder bank holding companies and their affiliates.

(b) Each participating holding company would own no more than 5 percent of the outstanding voting shares of the company. However, the investment of each holding company would be represented by a separate class of voting security, so that each stockholder would own 100 percent of its respective class. The participating companies would execute a formal "Agreement Among Stockholders" under which each would agree to use its best efforts at all times to direct or recommend to customers and clients the placement of their life, accident and health insurance directly or indirectly with the company. Such credit-related insurance placed with the company would be identified in the records of the company as having been originated by the respective stockholder. A separate capital account would be maintained for each stockholder consisting of the original capital contribution increased or decreased from time to time by the net profit or loss resulting from the insurance business attributable to each stockholder. Thus, each stockholder would receive a return on its investment based upon the claims experience and profitability of the insurance business that it had itself generated. Dividends declared by the board of directors of the company would be payable to each stockholder only out of the earned surplus reflected in the respective stockholder's capital account.

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[1] Section 4(c)(6) of the Act provides an exemption from the Act's prohibitions on ownership of shares in nonbanking companies for "shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company."

[2] It should be noted that every Board Order granting approval under section 4(c)(8) of the Act contains the following paragraph:

"This determination is subject . . . to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof."

The Board believes that, even apart from this Interpretation, this language preserves the authority of the Board to require the revisions contemplated in this Interpretation.

(c) It has been requested that the Board issue an interpretation that section 4(c)(6) of the Act provides an exemption under which participating bank holding companies may acquire such interests in the company without prior approval of the Board.

(d) On the basis of a careful review of the documents submitted, in light of the purposes and provisions of the Act, the Board has concluded that section 4(c)(6) of the Act is inapplicable to this proposal and that a bank holding company must obtain the approval of the Board before participating in such a proposal in the manner described. The Board's conclusion is based upon the following considerations:

(1) Section 2(a)(2)(A) of the Act provides that a company is deemed to have control over a second company if it owns or controls "25 per centum or more of any class of voting securities" of the second company. In the case presented, the stock interest of each participant would be evidenced by a different class of stock and each would accordingly, own 100 percent of a class of voting securities of the company. Thus, each of the stockholders would be deemed to "control" the company and prior Board approval would be required for each stockholder's acquisition of stock in the company.

The Board believes that this application of section 2(a)(2)(A) of the Act is particularly appropriate on the facts presented here. The company is, in practical effect, a conglomeration of separate business ventures each owned 100 percent by a stockholder the value of whose economic interest in the company is determined by reference to the profits and losses attributable to its respective class of stock. Furthermore, it is the Board's opinion that this application of section 2(a)(2)(A) is not inconsistent with section 4(c)(6). Even assuming that section (4)(c)(6) is intended to refer to all outstanding voting shares, and not merely the outstanding shares of a particular class of securities, section 4(c)(6) must be viewed as permitting ownership of 5 percent of a company's voting stock only when that ownership does not constitute "control" as otherwise defined in the Act. For example, it is entirely possible that a company could exercise a controlling influence over the management and policies of a second company, and thus "control" that company under the Act's definitions, even though it held less than 5 percent of the voting stock of the second company. To view section 4(c)(6) as an unqualified exemption for holdings of less than 5 percent would thus create a serious gap in the coverage of the Act.

(2) The Board believes that section 4(c)(6) should properly be interpreted as creating an exemption from the general prohibitions in section 4 on ownership of stock in nonbank companies only for passive investments amounting to not more than 5 percent of a company's outstanding stock, and that the exemption was not intended to allow a group of holding companies, through concerted action, to engage in an activity as entrepreneurs. Section 4

of the Act, of course, prohibits not only owning stock in nonbank companies, but engaging in activities other than banking or those activities permitted by the Board under section 4(c)(8) as being closely related to banking. Thus, if a holding company may be deemed to be engaging in an activity through the medium of a company in which it owns less than 5 percent of the voting stock it may nevertheless require Board approval, despite the section 4(c)(6) exemption.

(e) To accept the argument that section 4(c)(6) is an unqualified grant of permission to a bank holding company to own 5 percent of the shares of any nonbanking company irrespective of the nature or extent of the holding company's participation in the affairs of the nonbanking company would, in the Board's view, create the potential for serious and widespread evasion of the Act's controls over nonbanking activities. Such a construction would allow a group of 20 bank holding companies—or even a single bank holding company and one or more nonbank companies—to engage in entrepreneurial joint ventures in businesses prohibited to bank holding companies, a result the Board believes to be contrary to the intent of Congress.

(f) In this proposal, each of the participating stockholders must be viewed as engaging in the business of insurance underwriting. Each stockholder would agree to channel to the company the insurance business it generates, and the value of the interest of each stockholder would be determined by reference to the profitability of the business generated by that stockholder itself. There is no sharing or pooling among stockholders of underwriting risks assumed by the company, and profit or loss from investments is allocated on the basis of each bank holding company's allocable underwriting profit or loss. The interest of each stockholder is thus clearly that of an entrepreneur rather than that of an investor.

(g) Accordingly, on the basis of the factual situation before the Board, and for the reasons summarized above, the Board has concluded that section 4(c)(6) of the Act cannot be interpreted to exempt the ownership of 5 percent of the voting stock of a company under the circumstances described, and that a bank holding company wishing to become a stockholder in a company under this proposal would be required to obtain the Board's approval to do so.

[42 FR 1263, Jan. 6, 1977; 42 FR 2951, Jan. 14, 1977]

§ 225.138 Statement of policy concerning divestitures by bank holding companies.

(a) From time to time the Board of Governors receives requests from companies subject to the Bank Holding Company Act, or other laws administered by the Board, to extend time periods specified either by statute or by Board order for the divestiture of assets held or activities engaged in by such companies. Such divestiture requirements may arise in a number of ways. For example, divestiture may be ordered by the Board in connection with an acquisition found to have been made in violation of law. In other cases the divestiture may be pursuant to a statutory requirement imposed at the time and amendment to the Act was adopted, or it may be required as a result of a foreclosure upon collateral held by the company or a bank subsidiary in connection with a debt previously contracted in good faith. Certain divestiture periods may be extended in the discretion of the Board, but in other cases the Board may be without statutory authority, or may have only limited authority, to extend a specified divestiture period.

(b) In the past, divestitures have taken many different forms, and the Board has followed a variety of procedures in enforcing divestiture requirements. Because divestitures may occur under widely disparate factual circumstances, and because such forced dispositions may have the potential for causing a serious adverse economic impact upon the divesting company, the Board believes it is important to maintain a large measure of flexibility in dealing with divestitures. For these reasons, there can be no fixed rule as to the type of divestiture that will be appropriate in all situations. For example, where divestiture has been ordered to terminate a control relationship created or maintained in violation of the Act, it may be necessary to impose conditions that will assure that the unlawful relationship has been fully terminated and that it will not arise in the future. In other circumstances, however, less stringent conditions may be appropriate.

(1) *Avoidance of delays in divestitures.* Where a specific time period has been fixed for accomplishing divestiture, the affected company should endeavor and should be encouraged to complete the divestiture as early as possible during the specific period. There will generally be substantial advantages to divesting companies in taking steps to plan for and accomplish divestitures well before the end of the divestiture period. For example, delays may impair the ability of the company to realize full value for the divested assets, for as the end of the divestiture period approaches the "forced sale" aspect of the divestiture may lead potential buyers to withhold firm offers and to bargain for lower prices. In addition, because some prospective purchasers may themselves require regulatory approval to acquire the divested property, delay by the divesting company may—by leaving insufficient time to obtain such approvals—have the effect of narrowing the range of prospective purchases. Thus, delay in planning for divestiture may increase the likelihood that the company will seek an extension of the time for divestiture if difficulty is encountered in securing a purchaser, and in certain situations, of course, the Board may be without statutory authority to grant extensions.

(2) *Submissions and approval of divestiture plans.* When a divestiture requirement is imposed, the company affected should generally be asked to submit a divestiture plan promptly for review and approval by the Reserve Bank or the Board. Such a requirement may be imposed pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act to issue such orders as may be necessary to enable the Board to administer and carry out the purposes of the Act and prevent evasions thereof. A divestiture plan should be as specific as possible, and should indicate the manner in which divestiture will be accomplished—for example, by a bulk sale of the assets to a third party, by "spin-off" or distribution of shares to the shareholders of the divesting company, or by termination of prohibited activities. In addition, the plan should specify the steps the company expects to take in effecting the divestiture and assuring its completeness, and should indicate the time schedule for taking such steps. In appropriate circumstances, the divestiture plan should make provision for assuring that "controlling influence" relationships, such as management or financial interlocks, will not continue to exist.

(3) *Periodic progress reports.* A company subject to a divestiture requirement should generally be required to submit regular periodic reports detailing the steps it has taken to effect divestiture. Such a requirement may be imposed pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act, referred to above, as well as its authority under section 5(c) of the Act to require reports for the purpose of keeping the Board informed as to whether the Act and Board regulations and order thereunder are being complied with. Reports should set forth in detail such matters as the identities of potential buyers who have been approached by the company, the dates of discussions with potential buyers and the identities of the individuals involved in such discussions, the terms of any offers received, and the reasons for rejecting any offers. In addition, the reports should indicate whether the company has employed brokers, investment bankers or others to assist in the divestiture, or its reasons for not doing so, and should describe other efforts by the company to seek out possible purchasers. The purpose of requiring such reports is to insure that substantial and good faith efforts being made by the company to satisfy its divestiture obligations. The frequency of such reports may vary depending upon the nature of the divestiture and the period specified for divestiture. However, such reports should generally not be required less frequently than every three months, and may in appro-

priate cases be required on a monthly or even more frequent basis. Progress reports as well as divestiture plans should be afforded confidential treatment.

(4) *Extensions of divestiture periods.* Certain divestiture periods—such as December 31, 1980 deadline for divestitures required by the 1970 Amendments to the Bank Holding Company Act—are not extendable. In such cases it is imperative that divestiture be accomplished in a timely manner. In certain other cases, the Board may have discretion to extend a statutorily prescribed divestiture period within specified limits. For example, under section 4(c)(2) of the Act the Board may extend for three one-year periods the two-year period in which a bank subsidiary of a holding company is otherwise required to divest shares acquired in satisfaction of a debt previously contracted in good faith. In such cases, however, when the permissible extensions expire the Board no longer has discretion to grant further extensions. In still other cases, where a divestiture period is prescribed by the Board, in the exercise of its regulatory judgment, the Board may have broader discretion to grant extensions. Where extensions of specified divestiture periods are permitted by law, extensions should not be granted except under compelling circumstances. Neither unfavorable market conditions, nor the possibility that the company may incur some loss, should alone be viewed as constituting such circumstances—particularly if the company has failed to take earlier steps to accomplish a divestiture under more favorable circumstances. Normally, a request for an extension will not be considered unless the company has established that it has made substantial and continued good faith efforts to accomplish the divestiture within the prescribed period. Furthermore, requests for extensions of divestiture periods must be made sufficiently in advance of the expiration of the prescribed period both to enable the Board to consider the request in an orderly manner and to enable the company to effect a timely divestiture in the event the request for extension is denied. Companies subject to divestiture requirements should be aware that a failure to accomplish a divestiture within the prescribed period may in and of itself be viewed as a separate violation of the Act.

(5) *Use of trustees.* In appropriate cases a company subject to a divestiture requirement may be required to place the assets subject to divestiture with an independent trustee under instructions to accomplish a sale by a specified date, by public auction if necessary. Such a trustee may be given the responsibility for exercising the voting rights with respect to shares being divested. The use of such a trustee may be particularly appropriate where the divestiture is intended to terminate a control relationship established or maintained in violation of law, or where the divesting company has demonstrated an inability or unwillingness to take timely steps to effect a divestiture.

(6) *Presumptions of control.* Bank holding companies contemplating a divestiture should be mindful of section 2(g)(3) of the Bank Holding Company Act, which creates a presumption of continued control over the transferred assets where the transferee is indebted to the transferor, or where certain interlocks exist, as well as § 225.2 of Regulation Y, which sets forth certain additional control presumptions. Where one of these presumptions has arisen with respect to divested assets, the divestiture will not be considered as complete until the presumption has been overcome. It should be understood that the inquiry into the termination of control relationships is not limited by the statutory and regulatory presumptions of control, and that the Board may conclude that a control relationship still exists even though the presumptions do not apply.

(7) *Role of the Reserve Banks.* The Reserve Banks have a responsibility for supervising and enforcing divestitures. Specifically, in coordination with Board staff they should review divestiture plans to assure that proposed divestitures will result in the termination of control relationships and will not create unsafe or unsound conditions in any bank or bank holding company; they should monitor periodic progress reports to assure

that timely steps are being taken to effect divestitures; and they should prompt companies to take such steps when it appears that progress is not being made. Where Reserve Banks have delegated authority to extend divestiture periods, that authority should be exercised consistently with this policy statement.

[42 FR 10969, Feb. 25, 1977]

§ 225.139 Presumption of continued control under section 2(g)(3) of the Bank Holding Company Act.

(a) Section 2(g)(3) of the Bank Holding Company Act (the "Act") establishes a statutory presumption that where certain specified relationships exist between a transferor and transferee of shares, the transferor (if it is a bank holding company, or a company that would be such but for the transfer) continues to own or control indirectly the transferred shares.[1] This presumption arises by operation of law, as of the date of the transfer, without the need for any order or determination by the Board. Operation of the presumption may be terminated only by the issuance of a Board determination, after opportunity for hearing, "that the transferor is not in fact capable of controlling the transferee."[2]

(b) The purpose of section 2(g)(3) is to provide the Board an opportunity to assess the effectiveness of divestitures in certain situations in which there may be a risk that the divestiture will not result in the complete termination of a control relationship. By presuming control to continue as a matter of law, section 2(g)(3) operates to allow the effectiveness of the divestiture to be assessed before the divesting company is permitted to act on the assumption that the divestiture is complete. Thus, for example, if a holding company divests its banking interest under circumstances where the presumption of continued control arises, the divesting company must continue to consider itself bound by the Act until an appropriate order is entered by the Board dispelling the presumption. Section 2(g)(3) does not establish a substantive rule that invalidates transfers to which it applies, and in a great many cases the Board has acted favorably on applications to have the presumption dispelled. It merely provides a procedural opportunity for Board consideration of the effect of such transfers in advance of their being deemed effective. Whether or not the statutory presumption arises, the substantive test for assessing the effectiveness of a divestiture is the same—that is, the Board must be assured that all control relationships between the transferor and the transferred property have been terminated and will not be reestablished.[3]

(c) In the course of administering section 2(g)(3) the Board has had several occasions to consider the scope of that section. In addition, questions have been raised by and with the Board's staff as to coverage of the section. Accordingly, the Board believes it would be useful to set forth the following interpretations of section 2(g)(3):

(1) The terms "transferor" and "transferee," as used in section 2(g)(3), include parents and subsidiaries of each. Thus, for example, where a transferee is indebted to a subsidiary of the transferor, or where a specified interlocking relationship exists between the transferor or transferee and a subsidiary of the other (or between subsidiaries of each), the presumption arises. Similarly, if a parent of the

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[1] The presumption arises where the transferee "is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor."

[2] The Board has delegated to its General Counsel the authority to issue such determinations, 12 CFR 265.2(b)(1).

[3] It should be noted, however, that the Board will require termination of any interlocking management relationships between the divesting company and the transferee or the divested company as a precondition of finding that a divestiture is complete. Similarly, the retention of an economic interest in the divested company that would create an incentive for the divesting company to attempt to influence the management of the divested company will preclude a finding that the divestiture is complete. (See the Board's Order in the matter of "International Bank", 1977 Federal Reserve Bulletin 1106, 1113.)

transferee is indebted to a parent of the transferor, the presumption arises. The presumption of continued control also arises where an interlock or debt relationship is retained between the divesting company and the company being divested, since the divested company will be or may be viewed as a "subsidiary" of the transferee or group of transferees.

(2) The terms "officers," "directors," and "trustees," as used in section 2(g)(3), include persons performing functions normally associated with such positions (including general partners in a partnership and limited partners having a right to participate in the management of the affairs of the partnership) as well as persons holding such positions in an advisory or honorary capacity. The presumption arises not only where the transferee or transferred company has an officer, director or trustee "in common with" the transferor, but where the transferee himself holds such a position with the transferor.[4] It should be noted that where a transfer takes the form of a pro-rata distribution, or "spinoff," of shares to a company's shareholders, officers and directors of the transferor company are likely to receive a portion of such shares. The presumption of continued control would, of course, attach to any shares transferred to officers and directors of the divesting company, whether by "spinoff" or outright sale. However, the presumption will be of legal significance—and will thus require an application under section 2(g)(3)—only where the total number of shares subject to the presumption exceeds one of the applicable thresholds in the Act. For example, where officers and directors of a one-bank holding company receive in the aggregate 25 percent or more of the stock of a bank subsidiary being divested by the holding company, the holding company would be presumed to continue to control the "divested" bank. In such a case it would be necessary for the divesting company to demonstrate that it no longer controls either the divested bank or the officer/director transferees. However, if officers and directors were to receive in the aggregate less than 25 percent of the bank's stock (and no other shares were subject to the presumption), section 2(g)(3) would not have the legal effect of presuming continued control of the bank.[5] In the case of a divestiture of nonbank shares, an application under section 2(g)(3) would be required whenever officers and directors of the divesting company received in the aggregate more than 5 percent of the shares of the company being divested.

(3) Although section 2(g)(3) refers to transfers of "shares" it is not, in the Board's view, limited to disposition of corporate stock. General or limited partnership interests, for example, are included within the term "shares." Furthermore, the transfer of all or substantially all of the assets of a company, or the transfer of such a significant volume of assets that the transfer may in effect constitute the disposition of a separate activity of the company, is deemed by the Board to involve a transfer of "shares" of that company.

(4) The term "indebtedness" giving rise to the presumption of continued control under section 2(g)(3) of the Act is not limited to debt incurred in connection with the transfer; it includes any debt outstanding at the time of transfer from the transferee to the transferor or its subsidiaries. However, the Board believes that not every kind of indebtedness was within the contemplation of the Congress when section 2(g)(3) was adopted. Routine business credit of limited amounts and

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[4] It has been suggested that the words "in common with" in section 2(g)(3) evidence an intent to make the presumption applicable only where the transferee is a *company* having an interlock with the transferor. Such an interpretation would, in the Board's view, create an unwarranted gap in the coverage of section 2(g)(3). Furthermore, because the presumption clearly arises where the transferee is an individual who is indebted to the transferor such an interpretation would result in an illogical internal inconsistency in the statute.

[5] Of course, the fact that section 2(g)(3) would not operate to presume continued control would not necessarily mean that control had in fact been terminated if control could be exercised through other means.

loans for personal or household purposes are generally not the kinds of indebtedness that, standing alone, support a presumption that the creditor is able to control the debtor. Accordingly, the Board does not regard the presumption of section 2(g)(3) as applicable to the following categories of credit, provided the extensions of credit are not secured by the transferred property and are made in the ordinary course of business of the transferor (or its subsidiary) that is regularly engaged in the business of extending credit:

(i) Consumer credit extended for personal or household use to an individual transferee; (ii) student loans made for the education of the individual transferee or a spouse or child of the transferee; (iii) a home mortgage loan made to an individual transferee for the purchase of a residence for the individual's personal use and secured by the residence; and (iv) loans made to companies (as defined in section 2(b) of the Act) in an aggregate amount not exceeding ten per cent of the total purchase price (or if not sold, the fair market value) of the transferred property. The amounts and terms of the preceding categories of credit should not differ substantially from similar credit extended in comparable circumstances to others who are not transferees. It should be understood that, while the statutory presumption in situations involving these categories of credit may not apply, the Board is not precluded in any case from examining the facts of a particular transfer and finding that the divestiture of control was ineffective based on the facts of record.

(d) Section 2(g)(3) provides that a Board determination that a transferor is not in fact capable of controlling a transferee shall be made after opportunity for hearing. It has been the Board's routine practice since 1966 to publish notice in the FEDERAL REGISTER of applications filed under section 2(g)(3) and to offer interested parties an opportunity for a hearing. Virtually without exception no comments have been submitted on such applications by parties other than the applicant and, with the exception of one case in which the request was later withdrawn, no hearings have been requested in such cases. Because the Board believes that the hearing provision in section 2(g)(3) was intended as a protection for applicants who are seeking to have the presumption overcome by a Board order, a hearing would not be of use where an application is to be granted. In light of the experience indicating that the publication of FEDERAL REGISTER notice of such applications has not served a useful purpose, the Board has decided to alter its procedures in such cases. In the future, FEDERAL REGISTER notice of section 2(g)(3) applications will be published only in cases in which the Board's General Counsel, acting under delegated authority, has determined not to grant such an application and has referred the matter to the Board for decision.[6]

(12 U.S.C. 1841, 1844)

[43 FR 6214, Feb. 14, 1978; 43 FR 15147, Apr. 11, 1978; 43 FR 15321, Apr. 12, 1978, as amended at 45 FR 8280, Feb. 7, 1980; 45 FR 11125, Feb. 20, 1980]

§ 225.140 Disposition of property acquired in satisfaction of debts previously contracted.

(a) The Board recently considered the permissibility, under section 4 of the Bank Holding Company Act, of a subsidiary of a bank holding company acquiring and holding assets acquired in satisfaction of a debt previously contracted in good faith (a "dpc" acquisition). In the situation presented, a lending subsidiary of a bank holding company made a "dpc" acquisition of assets and transferred them to a wholly-owned subsidiary of the bank holding company for the purpose of effecting an orderly divestiture. The question presented was whether such "dpc" assets could be held indefinitely by a bank holding company subsidiary as incidental to its permissible lending activity.

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[6] It should be noted that in the event a third party should take exception to a Board order under section 2(g)(3) finding that control has been terminated, any rights such party might have would not be prejudiced by the order. If such party brought facts to the Board's attention indicating that control had not been terminated the Board would have ample authority to revoke its order and take necessary remedial action.

Orders issued under section 2(g)(3) are published in the Federal Reserve "Bulletin."

(b) While the Board believes that "dpc" acquisitions may be regarded as normal, necessary and incidental to the business of lending, the Board does not believe that the holding of assets acquired "dpc" without any time restrictions is appropriate from the standpoint of prudent banking and in light of the prohibitions in section 4 of the Act against engaging in nonbank activities. If a nonbanking subsidiary of a bank holding company were permitted, either directly or through a subsidiary, to hold "dpc" assets of substantial amount over an extended period of time, the holding of such property could result in an unsafe or unsound banking practice or in the holding company engaging in an impermissible activity in connection with the assets, rather than liquidating them.

(c) The Board notes that section 4(c)(2) of the Bank Holding Company Act provides an exemption from the prohibitions of section 4 of the Act for bank holding company subsidiaries to acquire *shares* "dpc". It also provides that such "dpc" shares may be held for a period of two years, subject to the Board's authority to grant three one-year extensions up to a maximum of five years.[1] Viewed in light of the Congressional policy evidenced by section 4(c)(2), the Board believes that a lending subsidiary of a bank holding company or the holding company itself, should be permitted, as an incident to permissible lending activities, to make acquisitions of "dpc" *assets*. Consistent with the principles underlying the provisions of section 4(c)(2) of the Act and as a matter of prudent banking practice, such assets may be held for no longer than five years from the date of acquisition. Within the divestiture period it is expected that the company will make good faith efforts to dispose of "dpc" shares or assets at the earliest practicable date. While no specific authorization is necessary to hold such assets for the five-year period, after two years from the date of acquisition of such assets, the holding company should report annually on its efforts to accomplish divestiture to its Reserve Bank. The Reserve Bank will monitor the efforts of the company to effect an orderly divestiture, and may order divestiture before the end of the five-year period if supervisory concerns warrant such action.

(d) The Board recognizes that there are instances where a company may encounter particular difficulty in attempting to effect an orderly divestiture of "dpc" real estate holdings within the divestiture period, notwithstanding its persistent good faith efforts to dispose of such property. In the Depository Institutions Deregulation and Monetary Control Act of 1980, (Pub. L. 96–221) Congress, recognizing that real estate possesses unusual characteristics, amended the National Banking Act to permit national banks to hold real estate for five years and for an additional five-year period subject to certain conditions. Consistent with the policy underlying the recent Congressional enactment, and as a matter of supervisory policy, a bank holding company may be permitted to hold real estate acquired "dpc" beyond the initial five-year period provided that the value of the real estate on the books of the company has been written down to fair market value, the carrying costs are not significant in relation to the overall financial position of the company, and the company has made good faith efforts to effect divestiture. Companies holding real estate for this extended period are expected to make active efforts to dispose of it, and should keep the Reserve Bank advised on a regular basis concerning their ongoing efforts. Fair market value should be derived from appraisals, comparable sales or some other reasonable method. In any case, "dpc" real estate would not be permitted to be held beyond 10 years from the date of its acquisition.

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[1] The Board notes that where the dpc shares or other similar interests represent less than 5 percent of the total of such interests outstanding, they may be retained on the basis of section 4(c)(6), even if originally acquired dpc.

(e) With respect to the transfer by a subsidiary of other "dpc" shares or assets to another company in the holding company system, including a section 4(c)(1)(D) liquidating subsidiary, or to the holding company itself, such transfers would not alter the original divestiture period applicable to such shares or assets at the time of their acquisition. Moreover, to ensure that assets are not carried at inflated values for extended periods of time, the Board expects, in the case of all such intracompany transfers, that the shares or assets will be transferred at a value no greater than the fair market value at the time of transfer and that the transfer will be made in a normal arms-length transaction.

(f) With regard to "dpc" assets acquired by a banking subsidiary of a holding company, so long as the assets continue to be held by the bank itself, the Board will regard them as being solely within the regulatory authority of the primary supervisor of the bank.

(12 U.S.C. 1843 (c)(1)(d), (c)(2), (c)(8), and 1844 (b); 12 U.S.C. 1818)

[45 FR 49905, July 28, 1980]

§ 225.141 Operations subsidiaries of a bank holding company.

In orders approving the retention by a bank holding company of a 4(c)(8) subsidiary, the Board has stated that it would permit, without any specific regulatory approval, the formation of a wholly owned subsidiary of an approved 4(c)(8) company to engage in activities that such a company could itself engage in directly through a division or department. (*Northwestern Financial Corporation*, 65 Federal Reserve Bulletin 566 (1979).) Section 4(a)(2) of the Act provides generally that a bank holding company may engage directly in the business of managing and controlling banks and permissible nonbank activities, and in furnishing services directly to its subsidiaries. Even though section 4 of the Act generally prohibits the acquisition of shares of nonbanking organizations, the Board does not believe that such prohibition should apply to the formation by a holding company of a wholly-owned subsidiary to engage in activities that it could engage in directly. Accordingly, as a general matter, the Board will permit without any regulatory approval a bank holding company to form a wholly-owned subsidiary to perform servicing activities for subsidiaries that the holding company itself could perform directly or through a department or a division under section 4(a)(2) of the Act. The Board believes that permitting this type of subsidiary is not inconsistent with the nonbanking prohibitions of section 4 of the Act, and is consistent with the authority in section 4(c)(1)(C) of the Act, which permits a bank holding company, without regulatory approval, to form a subsidiary to perform services for its *banking* subsidiaries. The Board notes, however, that a servicing subsidiary established by a bank holding company in reliance on this interpretation will be an affiliate of the subsidiary bank of the holding company for the purposes of the lending restrictions of section 23A of the Federal Reserve Act. (12 U.S.C. 371c)

(12 U.S.C. 1843(a)(2) and 1844(b))

[45 FR 54326, July 15, 1980]

§ 225.142 Statement of policy concerning bank holding companies engaging in futures, forward and options contracts on U.S. Government and agency securities and money market instruments.

(a) *Purpose of financial contract positions.* In supervising the activities of bank holding companies, the Board has adopted and continues to follow the principle that bank holding companies should serve as a source of strength for their subsidiary banks. Accordingly, the Board believes that any positions that bank holding companies or their nonbank subsidiaries take in financial contracts should reduce risk exposure, that is, not be speculative.

(b) *Establishment of prudent written policies, appropriate limitations and internal controls and audit programs.* If the parent organization or nonbank subsidiary is taking or intends to take positions in financial contracts, that company's board of directors should approve prudent written policies and establish appropriate limitations to insure that financial contract activities are performed in a safe and sound manner with levels of activity reasonably related to the organization's business needs and capacity to fulfill obligations. In addition, internal controls and internal audit programs to monitor such activity should be established. The board of directors, a duly authorized committee thereof or the internal auditors should review periodically (at least monthly) all financial contract positions to insure conformity with such policies and limits. In order to determine the company's exposure, all open positions should be reviewed and market values determined at least monthly, or more often, depending on volume and magnitude of positions.

(c) *Formulating policies and recording financial contracts.* In formulating its policies and procedures, the parent holding company may consider the interest rate exposure of its nonbank subsidiaries, but not that of its bank subsidiaries. As a matter of policy, the Board believes that any financial contracts executed to reduce the interest rate exposure of a bank affiliate of a holding company should be reflected on the books and records of the bank affiliate (to the extent required by the bank policy statements), rather than on the books and records of the parent company. If a bank has an interest rate exposure that management believes requires hedging with financial contracts, the bank should be the direct beneficiary of any effort to reduce that exposure. The Board also believes that final responsibility for financial contract transactions for the account of each affiliated bank should reside with the management of that bank.

(d) *Accounting.* The joint bank policy statements of March 12, 1980 include accounting guidelines for banks that engage in financial contract activities. Since the Financial Accounting Standards Board is presently considering accounting standards for contract activities, no specific accounting requirements for financial contracts entered into by parent bank holding companies and nonbank subsidiaries are being mandated at this time. The Board expects to review further developments in this area.

(e) *Board to monitor bank holding company transactions in financial contracts.* The Board intends to monitor closely bank holding company transactions in financial contracts to ensure that any such activity is consistent with maintaining a safe and sound banking system. In any cases where bank holding companies are found to be engaging in speculative practices, the Board is prepared to institute appropriate action under the Financial Institutions Supervisory Act of 1966, as amended.

(f) *Federal Reserve Bank notification.* Bank holding companies should furnish written notification to their District Federal Reserve Bank within 10 days after financial contract activities are begun by the parent or a nonbank subsidiary. Holding companies in which the parent or a nonbank subsidiary currently engage in financial contract activity should furnish notice by March 31, 1983.

(Secs. 5(b) and 8 of the Bank Holding Company Act (12 U.S.C. 1844 and 1847); sec. 8(b) of the Financial Institutions Supervisory Act (12 U.S.C. 1818(b))

[48 FR 7720, Feb. 24, 1983]

§ 225.143 Policy statement on nonvoting equity investments by bank holding companies.

(a) *Introduction.* (1) In recent months, a number of bank holding companies have made substantial equity investments in a bank or bank holding company (the "acquiree") located in states other than the home state of the investing company through acquisition of preferred stock or nonvoting common shares of the acquiree. Because of the evident interest in these types of investments and because they raise substantial questions under the Bank Holding Company Act (the "Act"), the Board believes it is appropriate to provide guidance regarding the consistency of such arrangements with the Act.

(2) This statement sets out the Board's concerns with these investments, the considerations the Board will take into account in determining whether the investments are consistent with the Act, and the general scope of arrangements to be avoided by bank holding companies. The Board recognizes that the complexity

of legitimate business arrangements precludes rigid rules designed to cover all situations and that decisions regarding the existence or absence of control in any particular case must take into account the effect of the combination of provisions and covenants in the agreement as a whole and the particular facts and circumstances of each case. Nevertheless, the Board believes that the factors outlined in this statement provide a framework for guiding bank holding companies in complying with the requirements of the Act.

(b) *Statutory and regulatory provisions.* (1) Under section 3(a) of the Act, a bank holding company may not acquire direct or indirect ownership or control of more than 5 per cent of the voting shares of a bank without the Board's prior approval. (12 U.S.C. 1842(a)(3)). In addition, this section of the Act provides that a bank holding company may not, without the Board's prior approval, acquire control of a bank: That is, in the words of the statute, "for any action to be taken that causes a bank to become a subsidiary of a bank holding company." (12 U.S.C. 1842(a)(2)). Under the Act, a bank is a subsidiary of a bank holding company if:

(i) The company directly or indirectly owns, controls, or holds with power to vote 25 per cent or more of the voting shares of the bank;

(ii) The company controls in any manner the election of a majority of the board of directors of the bank; or

(iii) The Board determines, after notice and opportunity for hearing, that the company has the power, directly or indirectly, to exercise a controlling influence over the management or policies of the bank. (12 U.S.C. 1841(d)).

(2) In intrastate situations, the Board may approve bank holding company acquisitions of additional banking subsidiaries. However, where the acquiree is located outside the home state of the investing bank holding company, section 3(d) of the Act prevents the Board from approving any application that will permit a bank holding company to "acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank." (12 U.S.C. 1842(d)(1)).

(c) *Review of agreements.* (1) In apparent expectation of statutory changes that might make interstate banking permissible, bank holding companies have sought to make substantial equity investments in other bank holding companies across state lines, but without obtaining more than 5 per cent of the voting shares or control of the acquiree. These investments involve a combination of the following arrangements:

(i) Options on, warrants for, or rights to convert nonvoting shares into substantial blocks of voting securities of the acquiree bank holding company or its subsidiary bank(s);

(ii) Merger or asset acquisition agreements with the out-of-state bank or bank holding company that are to be consummated in the event interstate banking is permitted;

(iii) Provisions that limit or restrict major policies, operations or decisions of the acquiree; and

(iv) Provisions that make acquisition of the acquiree or its subsidiary bank(s) by a third party either impossible or economically impracticable.

The various warrants, options, and rights are not exercisable by the investing bank holding company unless interstate banking is permitted, but may be transferred by the investor either immediately or after the passage of a period of time or upon the occurrence of certain events.

(2) After a careful review of a number of these agreements, the Board believes that investments in nonvoting stock, absent other arrangements, can be consistent with the Act. Some of the agreements reviewed appear consistent with the Act since they are limited to investments of relatively moderate size in nonvoting equity that may become voting equity only if interstate banking is authorized.

(3) However, other agreements reviewed by the Board raise substantial problems of consistency with the control provisions of the Act because the investors, uncertain whether or when interstate banking may be authorized, have evidently sought to assure the

soundness of their investments, prevent takeovers by others, and allow for sale of their options, warrants, or rights to a person of the investor's choice in the event a third party obtains control of the acquiree or the investor otherwise becomes dissatisfied with its investment. Since the Act precludes the investors from protecting their investments through ownership or use of voting shares or other exercise of control, the investors have substituted contractual agreements for rights normally achieved through voting shares.

(4) For example, various covenants in certain of the agreements seek to assure the continuing soundness of the investment by substantially limiting the discretion of the acquiree's management over major policies and decisions, including restrictions on entering into new banking activities without the investor's approval and requirements for extensive consultations with the investor on financial matters. By their terms, these covenants suggest control by the investing company over the management and policies of the acquiree.

(5) Similarly, certain of the agreements deprive the acquiree bank holding company, by covenant or because of an option, of the right to sell, transfer, or encumber a majority or all of the voting shares of its subsidiary bank(s) with the aim of maintaining the integrity of the investment and preventing takeovers by others. These long-term restrictions on voting shares fall within the presumption in the Board's Regulation Y that attributes control of shares to any company that enters into any agreement placing long-term restrictions on the rights of a holder of voting securities. (12 CFR 225.2(b)(4)).

(6) Finally, investors wish to reserve the right to sell their options, warrants or rights to a person of their choice to prevent being locked into what may become an unwanted investment. The Board has taken the position that the ability to control the ultimate disposition of voting shares to a person of the investor's choice and to secure the economic benefits therefrom indicates control of the shares under the Act.[1] Moreover, the ability to transfer rights to large blocks of voting shares, even if nonvoting in the hands of the investing company, may result in such a substantial position of leverage over the management of the acquiree as to involve a structure that inevitably results in control prohibited by the Act.

(d) *Provisions that avoid control.* (1) In the context of any particular agreement, provisions of the type described above may be acceptable if combined with other provisions that serve to preclude control. The Board believes that such agreements will not be consistent with the Act unless provisions are included that will preserve management's discretion over the policies and decisions of the acquiree and avoid control of voting shares.

(2) As a first step towards avoiding control, covenants in any agreement should leave management free to conduct banking and permissible nonbanking activities. Another step to avoid control is the right of the acquiree to "call" the equity investment and options or warrants to assure that covenants that may become inhibiting can be avoided by the acquiree. This right makes such investments or agreements more like a loan in which the borrower has a right to escape covenants and avoid the lender's influence by prepaying the loan.

(3) A measure to avoid problems of control arising through the investor's control over the ultimate disposition of rights to substantial amounts of voting shares of the acquiree would be a provision granting the acquiree a right of first refusal before warrants, options or other rights may be sold and requiring a public and dispersed distribution of these rights if the right of first refusal is not exercised.

(4) In this connection, the Board believes that agreements that involve rights to less than 25 percent of the voting shares, with a requirement for a dispersed public distribution in the event of sale, have a much greater prospect of achieving consistency with the Act than agreements involving a

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[1] *See* Board letter dated March 18, 1982, to C. A. Cavendes, Sociedad Financiera.

greater percentage. This guideline is drawn by analogy from the provision in the Act that ownership of 25 percent or more of the voting securities of a bank constitutes control of the bank.

(5) The Board expects that one effect of this guideline would be to hold down the size of the nonvoting equity investment by the investing company relative to the acquiree's total equity, thus avoiding the potential for control because the investor holds a very large proportion of the acquiree's total equity. Observance of the 25 percent guideline will also make provisions in agreements providing for a right of first refusal or a public and widely dispersed offering of rights to the acquiree's shares more practical and realistic.

(6) Finally, certain arrangements should clearly be avoided regardless of other provisions in the agreement that are designed to avoid control. These are:

(i) Agreements that enable the investing bank holding company (or its designee) to direct in any manner the voting of more than 5 per cent of the voting shares of the acquiree;

(ii) Agreements whereby the investing company has the right to direct the acquiree's use of the proceeds of an equity investment by the investing company to effect certain actions, such as the purchase and redemption of the acquiree's voting shares; and

(iii) The acquisition of more than 5 per cent of the voting shares of the acquiree that "simultaneously" with their acquisition by the investing company become nonvoting shares, remain nonvoting shares while held by the investor, and revert to voting shares when transferred to a third party.

(e) *Review by the Board.* This statement does not constitute the exclusive scope of the Board's concerns, nor are the considerations with respect to control outlined in this statement an exhaustive catalog of permissible or impermissible arrangements. The Board has instructed its staff to review agreements of the kind discussed in this statement and to bring to the Board's attention those that raise problems of consistency with the Act. In this regard, companies are requested to notify the Board of the terms of such proposed merger or asset acquisition agreements or nonvoting equity investments prior to their execution or consummation.

[47 FR 30966, July 16, 1982]

§ 225.144 Application required for the relocation of a subsidiary bank to another State.

(a) The Board has recently considered whether a bank holding company may relocate one of its subsidiary banks, pursuant to the approval of the Comptroller of the Currency under 12 U.S.C. 30, from the holding company's home state [1] to another state without the approval of the Board under section 3 of the Bank Holding Company Act ("BHC Act") and without compliance with the interstate banking provisions of the Douglas Amendment to the BHC Act. (12 U.S.C. 1842 (a) and (d)). After a review of the terms and purposes of the BHC Act, the Board concludes that the relocation of a subsidiary bank of a bank holding company from the holding company's home state to another state requires the Board's prior approval under the BHC Act and is subject to the interstate banking provisions of the Douglas Amendment to the BHC Act. The retention by a bank holding company of control of a bank after its relocation outside of the holding company's home state, while simultaneously controlling a bank in its home state, creates a multi-state bank holding company, and, in the Board's view, is inconsistent with, and constitutes an evasion of, the terms and intent of the BHC Act that a bank holding company not expand its banking operations outside its home state without the express approval of the other state.

(b) The BHC Act establishes a comprehensive Federal framework governing the operations and acquisitions of bank holding companies. Section 3(a) of the BHC Act provides that a bank holding company must obtain the approval of the Board, under specified competitive, financial, managerial and convenience and need factors before acquiring control of a bank. 12 U.S.C. 1842(a). The Douglas Amendment provides that the Board may not approve any application under section 3 that would allow a bank holding company to acquire control of or any interest in a bank located outside of the holding company's home state, unless the acquisition is specifically authorized by the state in which the bank to be acquired is located.

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[1] A bank holding company's home state under the BHC Act is that state in which the total deposits of its banking subsidiaries were largest on the day the company became a bank holding company or on July 1, 1966, whichever date is later. 12 U.S.C. 1842(d).

(c) The Douglas Amendment was adopted to prevent the creation or expansion of interstate banking networks through acquisition by a bank holding company of control of a bank located outside of the holding company's home state, without the explicit approval of the state in which the bank is located. (*See Florida Dep't of Banking* v. *Board of Governors*, 760 F.2d 1135, 1141 (11th Cir. 1985); *Credit and Commerce American Holdings, N.V.*, 65 Federal Reserve Bulletin 254, 255-56 (1979)). Under the terms of the BHC Act, the Board's authority to grant approval to a bank holding company to control a bank is limited to banks located within the holding company's home state or in states that have specifically authorized the acquisition. The Board has no authority to grant approval to a bank holding company to control a bank outside of the holding company's home state, without appropriate state statutory authorization. Thus, a bank holding company's authority to control a bank, which derives from the Board's approval under the BHC Act for the acquisition of the bank, must necessarily be limited by, and cannot be broader than, the Board's authority to grant approval for the acquisition in the first place. In other words, a bank holding company's authority to continue to control a bank acquired pursuant to the terms of the BHC Act is subject to the limitation of the BHC Act that the bank remain located in the state specified in its application to the Board to acquire the bank. A change in the location of the bank to a place outside of the holding company's home state constitutes a material change in an essential predicate for the Board's approval for the acquisition of the bank, transforming the proposal from one that the Board could approve to one that the Board did not and could not have lawfully approved.

(d) Accordingly, the Board believes that a bank holding company's authority to continue to control a bank is limited by the requirements of the Douglas Amendment such that the bank must remain in the state in which it was located at the time the Board granted approval for its acquisition and that a bank holding company may not, without the Board's prior approval under the BHC Act and compliance with the state authorization provisions of the Douglas Amendment, take action that would cause it to control a bank outside of its home state.

(e) The Board believes that this interpretation of the Act is not only consistent with the terms of the BHC Act, but is necessary in order to give effect to the Congressional intent underlying the Douglas Amendment to maintain state control over the acquisition of banks within their borders. As the legislative history of the Douglas Amendment indicates, prior to the enactment of the BHC Act, the acquisition and control of banks by bank holding companies was not regulated, and thus bank holding companies could establish networks of subsidiary banks in numerous states, while their subsidiary banks were limited by the McFadden Act and state law to branching in a single state. (102 Cong. Rec. 6858 (1956); H.R. No. 609, 84th Cong., 1st Sess. 3-4 (1955)). The United States Supreme Court has stated that the Douglas Amendment was enacted for the express purpose of eliminating this "loophole" in order to maintain "local, community-based control over banking. (*Northeast Bancorp, Inc.* v. *Board of Governors*, 105 S. Ct. 2545, 2553 (1985)).

(f) In the debate surrounding the enactment of the amendment, Senator Douglas described the amendment as intended "to prevent bank holding companies from expanding across State lines, unless the States give them explicit permission to do so," and that the "immediate practical effect [of the Amendment] would be to bar the expansion of bank holding companies across State lines."[2] The Senator stated that his proposal was "a logical continuation of the McFadden Act, which tried to prevent the Federal power from being used to permit national banks to expand across State lines in a way contrary to State policy . . . ." *Id.* and that it would "carry over into the field of holding companies the same provisions which already apply for branch banking under the McFadden Act . . . ." (102 *Cong. Rec.* 6858 (1956)).

(g) The principle of the McFadden Act, as applied to bank holding companies, requires that a bank holding company may not establish a subsidiary bank outside of its home state, unless authorized by the host state. While Congress has phrased the Douglas Amendment in terms of the application requirements of the BHC Act, it is clear that Congress was concerned with the substance of preventing further interstate expansion through the bank holding company device without express state authorization.

(h) In the Board's view, an interpretation of the BHC Act that would allow a bank holding company to acquire a bank in its home state and, without further approval under the BHC Act, relocate that bank to another state would nullify the stated purpose of the Douglas Amendment to ensure that the holding company form is not used to evade state restrictions against interstate banking. (*Northeast Bancorp*, 105 S. Ct. at 2550-52). Using the relocation device, a multi-bank holding company could expand into the adjoining state by relocating the main office of a subsidiary national bank located within thirty miles of a state border, while retaining control of its other subsidiary banks in its home state, regardless of whether the adjoining state has consented to entry by out-of-state bank holding companies.

(i) The Board has found no evidence that Congress intended section 30, which governs the relocation of the main office of a national bank, to create an exception to the provisions of the Douglas Amendment. Section 30 was enacted in 1886, and provided that a national bank may change its place of operations to any other place within the same state, not more than thirty miles distant, with the approval of the Comptroller of the Currency and shareholders. 24 Stat. 18. The Comptroller had interpreted this provision as not requiring the Comptroller's approval if the bank's place of operations was only moved within the city in which it was located. (S. Rep. No. 121, 85th Cong., 1st Sess. 17 (1957)). In 1959, Congress overturned this interpretation by amending section 30 to subject all changes of location by a national bank to the Comptroller's approval. *Id.*

(j) The amended section 30 does not contain the language in the previous version limiting changes in office location to within the state where the bank is located. The omission of this provision is not explained in the legislative history. There is, however, no indication in the relevant history that Congress affirmatively intended that the amendment to section 30, which was part of a package of technical amendments to the Federal banking laws, create a specific exception to the provisions or general policy of the Douglas Amendment—adopted three years earlier—against the establishment of new interstate bank holding companies without the consent of the states involved. The Board cannot attribute to a technical amendment, in the absence of compelling legislative history, any intention to abandon one of the central policies behind the enactment of the BHC Act in 1956.

(k) Finally, the Board believes that the relocation by a bank holding company of a subsidiary bank from the holding company's home state to another state, while continuing to retain a bank in its home state, would constitute an evasion of the Douglas Amendment that would warrant, if not require, the exercise by the Board of its authority under section 5(b) of the BHC Act to take necessary action to carry out the purposes and prevent evasions of the Act. 12 U.S.C. 1844(b).

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[2] 102 Cong. Rec. 6859-60 (1956). *Accord*, (Remarks of Senator Bennett) (the Douglas Amendment constitutes "a flat, unequivocal prohibition against bank holding companies crossing State lines . . . a blanket prohibition which can only be lifted by specific affirmative action by the States. . . .")

[50 FR 33913, Aug. 22, 1985; 50 FR 34802, Aug. 28, 1985]

PART 226—TRUTH IN LENDING

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SUPPLEMENT I—OFFICIAL STAFF INTERPRETATIONS

AUTHORITY: Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 96-221, 94 Stat. 170 (15 U.S.C. 1604 *et seq.*).

SOURCE: Reg. Z, 46 FR 20892, Apr. 7, 1981, unless otherwise noted.

Subpart A—General

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

(a) *Authority.* This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending and Fair Credit Billing Acts, which are contained in Title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*).

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit.

(c) *Coverage.* (1) In general, this regulation applies to each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly;[1] (iii) the credit is subject to a finance charge or is payable by a written agreement in more than 4 installments; and (iv) the credit is primarily for personal, family, or household purposes.

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[1] The meaning of "regularly" is explained in the definition of "creditor" in § 226.2(a).

(2) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, or is not payable by a written agreement in more than 4 installments, or if the credit card is to be used for business purposes.

(d) *Organization.* The regulation is divided into subparts and appendices as follows:

(1) Subpart A contains general information. It sets forth: (i) The authority, purpose, coverage, and organization of the regulation; (ii) the definitions of basic terms; (iii) the transactions that are exempt from coverage; and (iv) the method of determining the finance charge.

(2) Subpart B contains the rules for open-end credit. It requires that initial disclosures and periodic statements be provided. It also describes special rules that apply to credit card transactions, treatment of payments and credit balances, procedures for resolving credit billing errors, annual percentage rate calculations, rescission requirements, and advertising rules.

(3) Subpart C relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentage rate calculations, rescission requirements, and advertising.

(4) Subpart D contains rules on oral disclosures, Spanish language disclosure in Puerto Rico, record retention, effect on state laws, and state exemptions.

(5) There are several appendices containing information such as the procedures for determinations about state laws, state exemptions and issuance of staff interpretations, special rules for certain kinds of credit plans, a list of enforcement agencies, and the rules for computing annual percentage rates in closed-end credit transactions.

(e) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the Act and the regulation.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB Control No. 7100-0199.)

[Reg. Z, 46 FR 20892, Apr. 7, 1981, as amended at 49 FR 46991, Nov. 30, 1984]

§ 226.2 Definitions and rules of construction.

(a) *Definitions.* For purposes of this regulation, the following definitions apply:

(1) *"Act"* means the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

(2) *"Advertisement"* means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

(3) [Reserved][2]

(4) *"Billing cycle"* or *"cycle"* means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval will be considered equal if the number of days in the cycle does not vary more than 4 days from the regular day or date of the periodic statement.

(5) *"Board"* means the Board of Governors of the Federal Reserve System.

(6) *"Business day"* means a day on which a creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(7) *"Card issuer"* means a person that issues a credit card or that person's agent with respect to the card.

(8) *"Cardholder"* means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person. For purposes of § 226.12(a) and (b), the term includes any person to whom a credit card is issued for any purpose, including business, commercial, or agricultural use, or a person who has agreed with the card issuer to pay obli-

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[2] [Reserved]

gations arising from the issuance of such a credit card to another person.

(9) *"Cash price"* means the price at which a creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

(10) *"Closed-end credit"* means consumer credit other than "open-end credit" as defined in this section.

(11) *"Consumer"* means a cardholder or a natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 226.15 and 226.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

(12) *"Consumer credit"* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(13) *"Consummation"* means the time that a consumer becomes contractually obligated on a credit transaction.

(14) *"Credit"* means the right to defer payment of debt or to incur debt and defer its payment.

(15) *"Credit card"* means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit.

(16) *"Credit sale"* means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

(i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

(ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

(17) *"Creditor"* means:

(i) A person (A) who regularly extends consumer credit[3] that is subject to a finance charge or is payable by written agreement in more than 4 installments (not including a downpayment), and (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(ii) For purposes of §§ 226.4(c)(8) (discounts), 226.9(d) (Finance charge imposed at time of transaction), and 226.12(e) (Prompt notification of returns and crediting of refunds), a person that honors a credit card.

(iii) For purposes of Subpart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than 4 installments.

(iv) For purposes of Subpart B (except for the finance charge disclosures contained in §§ 226.6(a) and 226.7 (d) through (g) and the right of rescission set forth in § 226.15) and Subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than 4 installments.

(18) *"Downpayment"* means an amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(19) *"Dwelling"* means a residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes an individual condominium

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[3] A person regularly extends consumer credit only if it extended credit more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(20) *"Open-end credit"* means consumer credit extended by a creditor under a plan in which:

(i) The creditor reasonably contemplates repeated transactions;

(ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(21) *"Periodic rate"* means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

(22) *"Person"* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(23) *"Prepaid finance charge"* means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

(24) *"Residential mortgage transaction"* means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

(25) *"Security interest"* means an interest in property that secures performance of a consumer credit obligation and that is recognized by State or Federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosure under §§ 226.6 and 226.18, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under §§ 226.15 and 226.23, the term does include interests that arise solely by operation of law.

(26) *"State"* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) *Rules of construction.* For purposes of this regulation, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words "obligation" and "transaction" are used in this regulation, they refer to a consumer credit obligation or transaction, depending upon the context. Where the word "credit" is used in this regulation, it means "consumer credit" unless the context clearly indicates otherwise.

(3) Unless defined in this regulation, the words used have the meanings given to them by state law or contract.

(4) Footnotes have the same legal effect as the text of the regulation.

[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981, as amended at 47 FR 7392, Feb. 19, 1982; 48 FR 14886, Apr. 6, 1983]

§ 226.3 Exempt transactions.

This regulation does not apply to the following:[4]

(a) *Business, commercial, agricultural, or organizational credit. (1) An extension of credit primarily for a business, commercial or agricultural purpose.*

(2) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

(b) *Credit over $25,000 not secured by real property or a dwelling.* An extension of credit not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer, in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000.

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[4] The provisions in § 226.12 (a) and (b) governing the issuance of credit cards and the liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.

(c) *Public utility credit.* An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or home improvements by a public utility is not exempt.

(d) *Securities or commodities accounts.* Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(e) *Home fuel budget plans.* An installment agreement for the purchase of home fuels in which no finance charge is imposed.

(f) *Student loan programs.* Loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

[46 FR 20892, Apr. 7, 1981, as amended at 48 FR 14886, Apr. 6, 1983; 49 FR 46991, Nov. 30, 1984]

§ 226.4 Finance charge.

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(b) *Example of finance charge.* The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature.

(3) Points, loan fees, assumption fees, finder's fees, and similar charges.

(4) Appraisal, investigation, and credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(c) *Charges excluded from the finance charge.* The following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(5) Seller's points.

(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

(7) The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents.

(iii) Notary, appraisal, and credit report fees.

(iv) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the Act.

(d) *Insurance.* (1) Premiums for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed.

(ii) The premium for the initial term of insurance coverage is disclosed. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph. Any consumer in the transaction may sign or initial the request.

(2) Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property,[5] may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage may be obtained from a person of the consumer's choice,[6] and this fact is disclosed.

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(e) *Certain security interest charges.* If itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.

(f) *Prohibited offsets.* Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

Subpart B—Open-End Credit

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing,[7] in a form that the consumer may keep.[8]

(2) The terms "finance charge" and "annual percentage rate," when required to be disclosed with a corresponding amount or percentage rate,

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[5] This includes single interest insurance if the insurer waives all right of subrogation against the consumer.

[6] A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.

[7] The disclosure required by § 226.9(d) when a finance charge is imposed at the time of a transaction need not be written.

[8] The alternative summary billing rights statement provided for in § 226.9(a)(2), and the disclosures made under § 226.10(b) about payment requirements need not be in a form that the consumer can keep.

shall be more conspicuous than any other required disclosure.[9]

(b) *Time of disclosures.* (1) *Initial disclosures.* The creditor shall furnish the initial disclosure statement required by § 226.6 before the first transaction is made under the plan.

(2) *Periodic statements.* (i) The creditor shall mail or deliver a periodic statement as required by § 226.7 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, or if delinquency collection proceedings have been instituted, or if furnishing the statement would violate Federal law.

(ii) The creditor shall mail or deliver the periodic statement at least 14 days prior to any date or the end of any time period required to be disclosed under § 226.7(j) in order for the consumer to avoid an additional finance or other charge.[10] A creditor that fails to meet this requirement shall not collect any finance or other charge imposed as a result of such failure.

(c) *Basis of disclosures and use of estimates.* Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) *Multiple creditors; multiple consumers.* If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under § 226.15 is applicable, however, the disclosures required by §§ 226.6 and 226.15(b) shall be made to each consumer having the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this regulation, although new disclosures may be required under § 226.9(c).

§ 226.6 Initial disclosure statement.

The creditor shall disclose to the consumer, in terminology consistent with that to be used on the periodic statement, each of the following items, to the extent applicable:

(a) *Finance charge.* The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, as follows:

(1) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

(2) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,[11] and the corresponding annual percentage rate.[12] When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed.

(3) An explanation of the method used to determine the balance on

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[9] The terms need not be more conspicuous when used under § 226.7(d) on periodic statements and under § 226.16 in advertisements.

[10] This timing requirement does not apply if the creditor is unable to meet the requirement because of an act of God, war, civil disorder, natural disaster, or strike.

[11] A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

[12] If a creditor is offering a variable rate plan, the creditor shall also disclose: (1) The circumstances under which the rate(s) may increase; (2) any limitations on the increase; and (3) the effect(s) of an increase.

which the finance charge may be computed.

(4) An explanation of how the amount of any finance charge will be determined,[13] including a description of how any finance charge other than the periodic rate will be determined.

(b) *Other charges.* The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined.

(c) *Security interests.* The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(d) *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under §§ 226.12(c) and 226.13 and that is substantially similar to the statement found in Appendix G.

§ 226.7 Periodic statement.

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

(a) *Previous balance.* The account balance outstanding at the beginning of the billing cycle.

(b) *Identification of transactions.* An identification of each credit transaction in accordance with § 226.8.

(c) *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge.

(d) *Periodic rates.* Each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable,[14] and the corresponding annual percentage rate.[15] If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed.

(e) *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, that fact and the amount of the credits and payments shall be disclosed.

(f) *Amount of finance charge.* The amount of any finance charge debited or added to the account during the billing cycle, using the term "finance charge." The components of the finance charge shall be individually itemized and identified to show the amount(s) due to the appliction of any periodic rates and the amount(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

(g) *Annual percentage rate.* When a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 226.14, using the term "annual percentage rate."

(h) *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.

(i) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date.

(j) *Free-ride period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

(k) *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981]

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[13] If no finance charge is imposed when the outstanding balance is less than a certain amount, no disclosure is required of that fact or of the balance below which no finance charge will be imposed.

[14] See footnotes 11 and 13.

[15] If a variable rate plan is involved, the creditor shall disclose the fact that the periodic rate(s) may vary.

§ 226.8 Identification of transactions.

The creditor shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the following information, as applicable.[16]

(a) *Sale credit.* For each credit transaction involving the sale of property or services, the following rules shall apply:

(1) *Copy of credit document provided.* When an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, the transaction is sufficiently identified if the amount of the transaction and either the date of the transaction or the date of debiting the transaction to the consumer's account are disclosed on the copy or on the periodic statement.

(2) *Copy of credit document not provided—creditor and seller same or related person(s).* When the creditor and the seller are the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction, and a brief identification[17] of the property or services purchased.[18]

(3) *Copy of credit document not provided—creditor and seller not same or related person(s).* When the creditor and seller are not the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction; the seller's name; and the city, and state or foreign country where the transaction took place.[19]

(b) *Nonsale credit.* A nonsale credit transaction is sufficiently identified if the first periodic statement reflecting the transaction discloses a brief identification of the transaction;[20] the amount of the transaction; and at least one of the following dates: the date of the transaction, the date of debiting the transaction to the consumer's account, or, if the consumer signed the credit document, the date appearing on the document. If an actual copy of the receipt or other credit document is provided and that copy shows the amount and at least one of the specified dates, the brief identification may be omitted.

[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981]

§ 226.9 Subsequent disclosure requirements.

(a) *Furnishing statement of billing rights*—(1) *Annual statement.* The creditor shall mail or deliver the billing rights statement required by § 226.6(d) at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under § 226.5(b)(2) for any one billing cycle.

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[16] Failure to disclose the information required by this section shall not be deemed a failure to comply with the regulation if: (1) The creditor maintains procedures reasonably adapted to obtain and provide the information; and (2) the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e). This applies to transactions that take place outside a state, as defined in § 226.2(a), whether or not the creditor maintains procedures reasonably adapted to obtain the required information.

[17] As an alternative to the brief identification, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that creditor, and if the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e).

[18] An identification of property or services may be replaced by the seller's name and location of the transaction when: (1) The creditor and the seller are the same person; (2) the creditor's open-end plan has fewer than 15,000 accounts; (3) the creditor provides the consumer with point-of-sale documentation for that transaction; and (4) the creditor treats an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e).

[19] The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction (1) took place at a location that is not fixed; (2) took place in the consumer's home; or (3) was a mail or telephone order.

[20] See footnote 17.

(2) *Alternative summary statement.* As an alternative to paragraph (a)(1) of this section, the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to that in Appendix G.

(b) *Disclosures for supplemental credit devices and additional features*—(1) If a creditor, within 30 days after mailing or delivering the initial disclosures under § 226.6(a), adds a credit feature to the consumer's account or mails or delivers to the consumer a credit device for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. After 30 days, if the creditor adds a credit feature or furnishes a credit device (other than as a renewal, resupply, or the original issuance of a credit card) on the same finance charge terms, the creditor shall disclose, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed.

(2) Whenever a credit feature is added or a credit device is mailed or delivered, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by § 226.6(a) that are applicable to the added feature or device shall be given before the consumer uses the feature or device for the first time.

(c) *Change in terms*—(1) *Written notice required.* Whenever any term required to be disclosed under § 226.6 is changed or the required minimum periodic payment is increased, the creditor shall mail or deliver written notice of the change to each consumer who may be affected. The notice shall be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer, or if a periodic rate or other finance charge is increased because of the consumer's delinquency or default; the notice shall be given, however, before the effective date of the change.

(2) *Notice not required.* No notice under this section is required when the change involves late payment charges, charges for documentary evidence, or over-the-limit charges; a reduction of any component of a finance or other charge; suspension of future credit privileges or termination of an account or plan; or when the change results from an agreement involving a court proceeding, or from the consumer's default or delinquency (other than an increase in the periodic rate or other finance charge).

(d) *Finance charge imposed at time of transaction.* (1) Any person, other than the card issuer, who imposes a finance charge at the time of honoring a consumer's credit card, shall disclose the amount of that finance charge prior to its imposition.

(2) The card issuer, if other than the person honoring the consumer's credit card, shall have no responsibility for the disclosure required by paragraph (d)(1) of this section, and shall not consider any such charge for purposes of §§ 226.6 and 226.7.

[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981]

§ 226.10 Prompt crediting of payments.

(a) *General rule.* A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section.

(b) *Specific requirements for payments.* If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within 5 days of receipt.

(c) *Adjustment of account.* If a creditor fails to credit a payment, as required by paragraphs (a) and (b) of this section, in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

§ 226.11 Treatment of credit balances.

When a credit balance in excess of $1 is created on a credit account (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of a consumer), the creditor shall:

(a) Credit the amount of the credit balance to the consumer's account;

(b) Refund any part of the remaining credit balance within 7 business days from receipt of a written request from the consumer; and

(c) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than 6 months. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

§ 226.12 Special credit card provisions.

(a) *Issuance of credit cards.* Regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except:

(1) In response to an oral or written request or application for the card; or

(2) As a renewal of, or substitute for, an accepted credit card.[21]

(b) *Liability of cardholder for unauthorized use*—(1) *Limitation on amount.* The liability of a cardholder for unauthorized use[22] of a credit card shall not exceed the lesser of $50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

(2) *Conditions of liability.* A cardholder shall be liable for unauthorized use of a credit card only if:

(i) The credit card is an accepted credit card;

(ii) The card issuer has provided adequate notice[23] of the cardholder's maximum potential liability and of means by which the card issuer may be notified of loss or theft of the card. The notice shall state that the cardholder's liability shall not exceed $50 (or any lesser amount) and that the cardholder may give oral or written notification, and shall describe a means of notification (for example, a telephone number, an address, or both); and

(iii) The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

(3) *Notification to card issuer.* Notification to a card issuer is given when steps have been taken as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card, regardless of whether any particular officer, employee, or agent of the card issuer does, in fact, receive the information. Notification may be given, at the option of the person giving it, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(4) *Effect of other applicable law or agreement.* If state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in this paragraph, the lesser liability shall govern.

(5) *Business use of credit cards.* If 10 or more credit cards are issued by one

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[21] For purposes of this section, "accepted credit card" means any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with this paragraph becomes an accepted credit card when received by the cardholder.

[22] "Unauthorized use" means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.

[23] "Adequate notice" means a printed notice to a cardholder that sets forth clearly the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. The notice may be given by any means reasonably assuring receipt by the cardholder.

card issuer for use by the employees of an organization, this section does not prohibit the card issuer and the organization from agreeing to liability for unauthorized use without regard to this section. However, liability for unauthorized use may be imposed on an employee of the organization, by either the card issuer or the organization, only in accordance with this section.

(c) *Right of cardholder to assert claims or defenses against card issuer*[24]—(1) *General rule.* When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount.[25]

(2) *Adverse credit reports prohibited.* If, in accordance with paragraph (c)(1) of this section, the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered.

(3) *Limitations.* The rights stated in paragraphs (c)(1) and (2) of this section apply only if:

(i) The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card; and

(ii) The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds $50, and the disputed transaction occurred in the same state as the cardholder's current designated address or, if not within the same state, within 100 miles from that address.[26]

(d) *Offsets by card issuer prohibited.* (1) A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) This paragraph does not alter or affect the right of a card issuer acting under state or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) This paragraph does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with

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[24] This paragraph does not apply to the use of a check guarantee card or a debit card in connection with an overdraft credit plan, or to a check guarantee card used in connection with cash advance checks.

[25] The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. To determine the amount of credit outstanding for purposes of this section, payments and other credits shall be applied to: (1) Late charges in the order of entry to the account; then to (2) finance charges in the order of entry to the account; and then to (3) any other debits in the order of entry to the account. If more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

[26] The limitations stated in paragraph (c)(3)(ii) of this section shall not apply when the person honoring the credit card: (1) Is the same person as the card issuer; (2) is controlled by the card issuer directly or indirectly; (3) is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer; (4) controls the card issuer directly or indirectly; (5) is a franchised dealer in the card issuer's products or services; or (6) has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.

the card issuer (subject to the limitations in § 226.13(d)(1)).

(e) *Prompt notification of returns and crediting of refunds.* (1) When a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's credit card account, that creditor shall, within 7 business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

(2) The card issuer shall, within 3 business days from receipt of a credit statement, credit the consumer's account with the amount of the refund.

(3) If a creditor other than a card issuer routinely gives cash refunds to consumers paying in cash, the creditor shall also give credit or cash refunds to consumers using credit cards, unless it discloses at the time the transaction is consummated that credit or cash refunds for returns are not given. This section does not require refunds for returns nor does it prohibit refunds in kind.

(f) *Discounts; tie-in arrangements.* No card issuer may, by contract or otherwise:

(1) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(g) *Relation to Electronic Fund Transfer Act and Regulation E.* For guidance on whether Regulation Z or Regulation E applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR 205.5(c) regarding issuance and 205.6(d) regarding liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

§ 226.13 Billing error resolution [27]

(a) *Definition of billing error.* For purposes of this section, the term "billing error" means:

(1) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan.

(2) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§ 226.7(b) and 226.8.

(3) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed.

(4) A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account.

(5) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor.

(6) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence.

(7) The creditor's failure to mail or deliver a periodic statement to the consumer's last known address if that address was received by the creditor, in writing, at least 20 days before the

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[27] A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor may be subject to the forfeiture penalty under section 161(e) of the Act for failure to comply with any of the requirements of this section.

end of the billing cycle for which the statement was required.

(b) *Billing error notice.*[28] A billing error notice is a written notice[29] from a consumer that:

(1) Is received by a creditor at the address disclosed under § 226.7(k) no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;

(2) Enables the creditor to identify the consumer's name and account number; and

(3) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

(c) *Time for resolution; general procedures.* (1) The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within the 30-day period; and

(2) The creditor shall comply with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

(d) *Rules pending resolution.* Until a billing error is resolved under paragraph (e) or (f) of this section, the following rules apply:

(1) *Consumer's right to withhold disputed amount; collection action prohibited.* The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges).[30] If the cardholder maintains a deposit account with the card issuer and has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer shall not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to 3 business days before the scheduled payment date.

(2) *Adverse credit reports prohibited.* The creditor or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.

(e) *Procedures if billing error occurred as asserted.* If a creditor determines that a billing error occurred as asserted, it shall within the time limits in paragraph (c)(2) of this section:

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver a correction notice to the consumer.

(f) *Procedures if different billing error or no billing error occurred.* If, after conducting a reasonable investigation,[31] a creditor determines that no

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[28] The creditor need not comply with the requirements of paragraphs (c) through (g) of this section if the consumer concludes that no billing error occurred and voluntarily withdraws the billing error notice.

[29] The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by §§ 226.6(d) and 226.9(a).

[30] A creditor is not prohibited from taking action to collect any undisputed portion of the item or bill; from deducting any disputed amount and related finance or other charges from the consumer's credit limit on the account; or from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the creditor indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the creditor's compliance with this section.

[31] If a consumer submits a billing error notice alleging either the nondelivery of property or services under paragraph (a)(3) of this section or that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card has made an incorrect report to

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billing error occurred or that a different billing error occurred from that asserted, the creditor shall within the time limits in paragraph (c)(2) of this section:

(1) Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(g) *Creditor's rights and duties after resolution.* If a creditor, after complying with all of the requirements of this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

(1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;

(2) Shall allow any time period disclosed under §§ 226.6(a)(1) and 226.7(j), during which the consumer can pay the amount due under paragraph (g)(1) of this section without incurring additional finance or other charges;

(3) May report an account or amount as delinquent because the amount due under paragraph (g)(1) of this section remains unpaid after the creditor has allowed any time period disclosed under §§ 226.6(a)(1) and 266.7(j) or 10 days (whichever is longer) during which the consumer can pay the amount; but

(4) May not report that an amount or account is delinquent because the amount due under paragraph (g)(1) of the section remains unpaid, if the creditor receives (within the time allowed for payment in paragraph (g)(3) of this section) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also:

(i) Promptly reports that the amount or account is in dispute;

(ii) Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and

(iii) Promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

(h) *Reassertion of billing error.* A creditor that has fully complied with the requirements of this section has no further responsibilities under this section (other than as provided in paragraph (g)(4) of this section) if a consumer reasserts substantially the same billing error.

(i) *Relation to Electronic Fund Transfer Act and Regulation E.* If an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor shall comply with the requirements of Regulation E, 12 CFR 205.11 governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section.

§ 226.14 Determination of annual percentage rate.

(a) *General rule.* The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than ⅛ of 1 percentage point above or below the annual percentage rate determined in accordance with this section.[31a]

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the card issuer, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the property or services were actually delivered, mailed, or sent as agreed or that the information was correct.

[31a] An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if: (1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and (2) upon discovery of the error, the creditor

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(b) *Annual percentage rate for initial disclosures and for advertising purposes.* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of §§ 226.6(a)(2) and 226.16(b)(2) shall be computed by multiplying each periodic rate by the number of periods in a year.

(c) *Annual percentage rate for periodic statements.* The annual percentage rate(s) to be disclosed for purposes of § 226.7(d) shall be computed by multiplying each periodic rate by the number of periods in a year and, for purposes of § 226.7(g), shall be determined as follows:

(1) If the finance charge is determined solely by applying one or more periodic rates, at the creditor's option, either:

(i) By multiplying each periodic rate by the number of periods in a year; or

(ii) By dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle, by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which it is applicable[32] and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.[33]

(3) If the finance charge imposed during the billing cycle is or includes a charge relating to a specific transaction during the billing cycle (even if the total finance charge also includes any other minimum, fixed, or other charge not due to the application of a periodic rate), by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year,[34] except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year.[35]

(4) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of paragraphs (c)(2) and (3) of this section.

(d) *Calculations where daily periodic rate applied.* If the provisions of paragraph (c)(1)(ii) or (2) of this section apply and all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined either:

(1) By dividing the total finance charge by the average of the daily balances and multiplying the quotient by the number of billing cycles in a year; or

(2) By dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

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promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Board in writing of the error in the calculation tool.

[32] If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section.

[33] Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening of the account, the amount of such charge shall not be included in the calculation of the annual percentage rate.

[34] See Appendix F regarding determination of the denominator of the fraction under this paragraph.

[35] See footnote 33.

[46 FR 20892, Apr. 7, 1981, as amended at 47 FR 756, Jan. 7, 1982; 48 FR 14886, Apr. 6, 1983]

§ 226.15 Right of rescission.

(a) *Consumer's right to rescind.* (1)(i) Except as provided in paragraph (a)(1)(ii) of this section, in a credit plan in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind: each credit extension made under the plan; the plan when the plan is opened; a security interest when added or increased to secure an existing plan; and the increase when a credit limit on the plan is increased.

(ii) As provided in section 125(e) of the Act, the consumer does not have the right to rescind each credit extension made under the plan if such extension is made in accordance with a previously established credit limit for the plan.

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram, or other means of written communication. Notice is considered given when mailed, or when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following the occurrence described in paragraph (a)(1) of this section that gave rise to the right of rescission, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures,[36] whichever occurs last. If the required notice and material disclosures are not delivered, the right to rescind shall expire 3 years after the occurrence giving rise to the right of rescission, or upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the Act.

(4) When more than one consumer has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b) *Notice of right to rescind.* In any transaction or occurrence subject to rescission, a creditor shall deliver 2 copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall identify the transaction or occurrence and clearly and conspicuously disclose the following:

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

(2) The consumer's right to rescind, as described in paragraph (a)(1) of this section.

(3) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(4) The effects of rescission, as described in paragraph (d) of this section.

(5) The date the rescission period expires.

(c) *Delay of creditor's performance.* Unless a consumer waives the right to rescind under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed, and no materials delivered until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded. A creditor does not violate this section if a third party with no knowledge of the event activating the rescission right does not delay in providing materials or services, as long as the debt incurred for those materials or services is not secured by the property subject to rescission.

(d) *Effects of rescission.* (1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void, and the consumer shall not be liable for any amount, including any finance charge.

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[36] The term "material disclosures" means the information that must be provided to satisfy the requirements in § 226.6 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, and the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.

(e) *Consumer's waiver of right to rescind.* The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, that specifically modifies or waives the right to rescind, and that bears the signatures of the consumers entitled to rescind. Printed forms for this purpose are prohibited.

(f) *Exempt transactions.* The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A credit plan in which a state agency is a creditor.

§ 226.16 Advertising.

(a) *Actually available terms.* If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) *Advertisement of terms that require additional disclosures.* If any of the terms required to be disclosed under § 226.6 is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following:

(1) Any minimum, fixed, transaction, activity or similar charge that could be imposed.

(2) Any periodic rate that may be applied expressed as an annual percentage rate as determined under § 226.14(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.

(3) Any membership or participation fee that could be imposed.

(c) *Catalogs and multiple-page advertisements.* (1) If a catalog or other multiple-page advertisement gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms set forth in § 226.6 appearing anywhere else in the catalog or advertisement clearly refers to that page on which the table or schedule begins.

(2) A catalog or multiple-page advertisement complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Subpart C—Closed-End Credit

§ 226.17 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related[37] to the disclosures required under § 226.18.[38] The itemization of the amount financed under § 226.18(c)(1) must be separate from the other disclosures under that section.

(2) The terms "finance charge" and "annual percentage rate," when required to be disclosed under § 226.18 (d) and (e) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor's identity under § 226.18(a).

(b) *Time of disclosures.* The creditor shall make disclosures before consummation of the transaction. In certain residential mortgage transactions, special timing requirements are set forth in § 226.19. In certain transactions involving mail or telephone orders or a series of sales, the timing of the disclosures may be delayed in accordance with paragraphs (g) and (h) of this section.

(c) *Basis of disclosures and use of estimates.* (1) The disclosures shall reflect the terms of the legal obligation between the parties.

(2) If any information necessary for an accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state that the disclosure is an estimate.

(3) The creditor may disregard the effects of the following in making calculations and disclosures.

(i) That payments must be collected in whole cents.

(ii) That dates of scheduled payments and advances may be changed because the scheduled date is not a business day.

(iii) That months have different numbers of days.

(iv) The occurrence of leap year.

(4) In making calculations and disclosures, the creditor may disregard any irregularity in the first period that falls within the limits described below and any payment schedule irregularity that results from the irregular first period:

(i) For transactions in which the term is less than 1 year, a first period not more than 6 days shorter or 13 days longer than a regular period;

(ii) For transactions in which the term is at least 1 year and less than 10 years, a first period not more than 11 days shorter or 21 days longer than a regular period; and

(iii) For transactions in which the term is at least 10 years, a first period shorter than or not more than 32 days longer than a regular period.

(5) If an obligation is payable on demand, the creditor shall make the disclosures based on an assumed maturity of 1 year. If an alternate maturity date is stated in the legal obligation between the parties, the disclosures shall be based on that date.

(6)(i) A series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction.

(ii) When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

(d) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this regulation imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under § 226.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this regulation, although new disclosures may be required under paragraph (f) of this section, § 226.19, or § 226.20.

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[37] The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number.

[38] The following disclosures may be made together or separately from other required disclosures: the creditor's identity under § 226.18(a), the variable rate example under § 226.18(f)(4), insurance under § 226.18(n), and certain security interest charges under § 226.18(o).

(f) *Early disclosures.* If disclosures are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose the changed terms before consummation, if the annual percentage rate in the consummated transaction varies from the annual percentage rate disclosed under § 226.18(e) by more than ⅛ of 1 percentage point in a regular transaction, or more than ¼ of 1 percentage point in an irregular transaction, as defined in § 226.22(a).

(g) *Mail or telephone orders—delay in disclosures.* If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or any other written or electronic communication without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form to the consumer or to the public before the actual purchase order or request:

(1) The cash price or the principal loan amount.

(2) The total sale price.

(3) The finance charge.

(4) The annual percentage rate, and if the rate may increase after consummation, the following disclosures:

(i) The circumstances under which the rate may increase.

(ii) Any limitations on the increase.

(iii) The effect of an increase.

(5) The terms of repayment.

(h) *Series of sales—delay in disclosures.* If a credit sale is one of a series made under an agreement providing that subsequent sales may be added to an outstanding balance, the creditor may delay the required disclosures until the due date of the first payment for the current sale, if the following two conditions are met:

(1) The consumer has approved in writing the annual percentage rate or rates, the range of balances to which they apply, and the method of treating any unearned finance charge on an existing balance.

(2) The creditor retains no security interest in any property after the creditor has received payments equal to the cash price and any finance charge attributable to the sale of that property. For purposes of this provision, in the case of items purchased on different dates, the first purchased is deemed the first item paid for; in the case of items purchased on the same date, the lowest priced is deemed the first item paid for.

(i) *Interim student credit extensions.* For each transaction involving an interim credit extension under a student credit program, the creditor need not make the following disclosures: the finance charge under § 226.18(d), the payment schedule under § 226.18(g), the total of payments under § 226.18(h), or the total sale price under § 226.18(j).

§ 226.18 Content of disclosures.

For each transaction, the creditor shall disclose the following information as applicable:

(a) *Creditor.* The identity of the creditor making the disclosures.

(b) *Amount financed.* The "amount financed," using that term, and a brief description such as "the amount of credit provided to you or on your behalf." The amount financed is calculated by:

(1) Determining the principal loan amount or the cash price (subtracting any downpayment);

(2) Adding any other amounts that are financed by the creditor and are not part of the finance charge; and

(3) Subtracting any prepaid finance charge.

(c) *Itemization of amount financed.* (1) A separate written itemization of the amount financed, including: [39]

(i) The amount of any proceeds distributed directly to the consumer.

(ii) The amount credited to the consumer's account with the creditor.

(iii) Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall identify those persons.[40]

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[39] Good faith estimates of settlement costs provided for transactions subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) may be substituted for the disclosures required by paragraph (c) of this section.

(iv) The prepaid finance charge.

(2) The creditor need not comply with paragraph (c)(1) of this section if the creditor provides a statement that the consumer has the right to receive a written itemization of the amount financed, together with a space for the consumer to indicate whether it is desired, and the consumer does not request it.

(d) *Finance charge.* The "finance charge," using that term, and a brief description such as "the dollar amount the credit will cost you."[41]

(e) *Annual percentage rate.* The "annual percentage rate," using that term, and a brief description such as "the cost of your credit as a yearly rate."[42]

(f) *Variable rate.* If the annual percentage rate may increase after consummation, the following disclosures:[43]

(1) The circumstances under which the rate may increase.

(2) Any limitations on the increase.

(3) The effect of an increase.

(4) An example of the payment terms that would result from an increase.

(g) *Payment schedule.* The number, amounts, and timing of payments scheduled to repay the obligation.

(1) In a demand obligation with no alternate maturity date, the creditor may comply with this paragraph by disclosing the due dates or payment periods of any scheduled interest payments for the first year.

(2) In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with this paragraph by disclosing the following information:

(i) The dollar amounts of the largest and smallest payments in the series.

(ii) A reference to the variations in the other payments in the series.

(h) *Total of payments.* The "total of payments," using that term, and a descriptive explanation such as "the amount you will have paid when you have made all scheduled payments."[44]

(i) *Demand feature.* If the obligation has a demand feature, that fact shall be disclosed. When the disclosures are based on an assumed maturity of 1 year as provided in § 226.17(c)(5), that fact shall also be disclosed.

(j) *Total sale price.* In a credit sale, the "total sale price," using that term, and a descriptive explanation (including the amount of any downpayment) such as "the total price of your purchase on credit, including your downpayment of $——." The total sale price is the sum of the cash price, the items described in paragraph (b)(2), and the finance charge disclosed under paragraph (d) of this section.

(k) *Prepayment.* (1) When an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full.

(2) When an obligation includes a finance charge other than the finance charge described in paragraph (k)(1) of this section, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full.

(l) *Late payment.* Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge.

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[40] The following payees may be described using generic or other general terms and need not be further identified: public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.

[41] The finance charge shall be considered accurate if it is not more than $5 above or below the exact finance charge in a transaction involving an amount financed of $1,000 or less, or not more than $10 above or below the exact finance charge in a transaction involving an amount financed of more that $1,000.

[42] For any transaction involving a finance charge of $5 or less on an amount financed of $75 or less, or a finance charge of $7.50 or less on an amount financed of more than $75, the creditor need not disclose the annual percentage rate.

[43] Information provided in accordance with variable rate regulations of other federal agencies may be substituted for the disclosures required by paragraph (f) of this section.

[44] In any transaction involving a single payment, the creditor need not disclose the total of payments.

(m) *Security interest.* The fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction, or in other property identified by item or type.

(n) *Insurance.* The items required by § 226.4(d) in order to exclude certain insurance premiums from the finance charge.

(o) *Certain security interest charges.* The disclosures required by § 226.4(e) in order to exclude from the finance charge certain fees prescribed by law or certain premiums for insurance in lieu of perfecting a security interest.

(p) *Contract reference.* A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. At the creditor's option, the statement may also include a reference to the contract for further information about security interests and, in a residential mortgage transaction, about the creditor's policy regarding assumption of the obligation.

(q) *Assumption policy.* In a residential mortgage transaction, a statement whether or not a subsequent purchaser of the dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.

(r) *Required deposit.* If the creditor requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit.[45]

[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981]

§ 226.19 Certain residential mortgage transactions.

(a) *Time of disclosure.* In a residential mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) the creditor shall make good faith estimates of the disclosures required by § 226.18 before consummation, or shall deliver or place them in the mail not later than 3 business days after the creditor receives the consumer's written application, whichever is earlier.

(b) *Redisclosure required.* If the annual percentage rate in the consummated transaction varies from the annual percentage rate disclosed under § 226.18(e) by more than ⅛ of 1 percentage point in a regular transaction or more than ¼ of 1 percentage point in an irregular transaction, as defined in § 226.22, the creditor shall disclose the changed terms no later than consummation or settlement.

§ 226.20 Subsequent disclosure requirements.

(a) *Refinancings.* A refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation. The following shall not be treated as a refinancing:

(1) A renewal of a single payment obligation with no change in the original terms.

(2) A reduction in the annual percentage rate with a corresponding change in the payment schedule.

(3) An agreement involving a court proceeding.

(4) A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in § 226.4(d).

(5) The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart.

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[45] A required deposit need not include, for example: (1) an escrow account for items such as taxes, insurance or repairs; (2) a deposit that earns not less than 5 percent per year; or (3) payments under a Morris Plan.

(b) *Assumptions.* An assumption occurs when a creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligor on an existing residential mortgage transaction. Before the assumption occurs, the creditor shall make new disclosures to the subsequent consumer, based on the remaining obligation. If the finance charge originally imposed on the existing obligation was an add-on or discount finance charge, the creditor need only disclose:

(1) The unpaid balance of the obligation assumed.

(2) The total charges imposed by the creditor in connection with the assumption.

(3) The information required to be disclosed under § 226.18(k), (l), (m), and (n).

(4) The annual percentage rate originally imposed on the obligation.

(5) The payment schedule under § 226.18(g) and the total of payments under § 226.18(h) based on the remaining obligation.

§ 226.21 Treatment of credit balances.

When a credit balance in excess of $1 is created in connection with a transaction (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of a consumer), the creditor shall:

(a) Credit the amount of the credit balance to the consumer's account;

(b) Refund any part of the remaining credit balance, upon the written request of the consumer; and

(c) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than 6 months, except that no further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

§ 226.22 Determination of annual percentage rate.

(a) *Accuracy of annual percentage rate.* (1) The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made. The annual percentage rate shall be determined in accordance with either the actuarial method or the United States Rule method. Explanations, equations and instructions for determining the annual percentage rate in accordance with the actuarial method are set forth in Appendix J to this regulation.[45a]

(2) As a general rule, the annual percentage rate shall be considered accurate if it is not more than ⅛ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section.

(3) In an irregular transaction, the annual percentage rate shall be considered accurate if it is not more than ¼ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section.[46]

(b) *Computation tools.* (1) The Regulation Z Annual Percentage Rate Tables produced by the Board may be used to determine the annual percentage rate, and any rate determined from those tables in accordance with the accompanying instructions complies with the requirements of this section. Volume I of the tables applies to single advance transactions involving up to 480 monthly payments or 104 weekly payments. It may be used for regular transactions and for transactions with any of the following irregularities: an irregular first period, an irregular first payment, and an irregular final payment. Volume II of the tables applies to transactions involving multiple advances and any type of payment or period irregularity.

[45a] An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if: (1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and (2) upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes and notifies the Board in writing of the error in the calculation tool.

[46] For purposes of paragraph (a)(3) of this section, an irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment).

(2) Creditors may use any other computation tool in determining the annual percentage rate if the rate so determined equals the rate determined in accordance with Appendix J, within the degree of accuracy set forth in paragraph (a) of this section.

(c) *Single add-on rate transactions.* If a single add-on rate is applied to all transactions with maturities up to 60 months and if all payments are equal in amount and period, a single annual percentage rate may be disclosed for all those transactions, so long as it is the highest annual percentage rate for any such transaction.

(d) *Certain transactions involving ranges of balances.* For purposes of disclosing the annual percentage rate referred to in § 226.17(g)(4) (Mail or telephone orders—delay in disclosures) and (h) (Series of sales—delay in disclosures), if the same finance charge is imposed on all balances within a specified range of balances, the annual percentage rate computed for the median balance may be disclosed for all the balances. However, if the annual percentage rate computed for the median balance understates the annual percentage rate computed for the lowest balance by more than 8 percent of the latter rate, the annual percentage rate shall be computed on whatever lower balance will produce an annual percentage rate that does not result in an understatement of more than 8 percent of the rate determined on the lowest balance.

[46 FR 20892, Apr. 7, 1981, as amended at 47 FR 756, Jan. 7, 1982; 48 FR 14886, Apr. 6, 1983]

§ 226.23 Right of rescission.

(a) *Consumer's right to rescind.* (1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section.[47]

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when delivered to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures,[48] whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the Act.

(4) When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b) *Notice of right to rescind.* In a transaction subject to rescission, a creditor shall deliver 2 copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

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[47] For purposes of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor shall deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.

[48] The term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, and the payment schedule.

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

(2) The consumer's right to rescind the transaction.

(3) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(4) The effects of rescission, as described in paragraph (d) of this section.

(5) The date the rescission period expires.

(c) *Delay of creditor's performance.* Unless a consumer waives the right of rescission under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

(d) *Effects of rescission.* (1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d) (2) and (3) of this section may be modified by court order.

(e) *Consumer's waiver of right to rescind.* The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all of the consumers entitled to rescind. Printed forms for this purpose are prohibited.

(f) *Exempt transactions.* The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling. If the new amount financed exceeds the unpaid principal balance plus any earned unpaid finance charge on the existing debt, this exemption applies only to the existing debt and its security interest.

(3) A transaction in which a state agency is a creditor.

(4) An advance, other than an initial advance, in a series of advances or in a series of single-payment obligations that is treated as a single transaction under § 226.17(c)(6), if the notice required by paragraph (b) of this section and all material disclosures have been given to the consumer.

(5) A renewal of optional insurance premiums that is not considered a refinancing under § 226.20(a)(5).

[46 FR 20892, Apr. 7, 1981, as amended at 47 FR 51732, Nov. 17, 1982]

§ 226.24 Advertising.

(a) *Actually available terms.* If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) *Advertisement of rate of finance charge.* If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(c) *Advertisement of terms that require additional disclosures.* (1) If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (c)(2) of this section:

(i) The amount or percentage of any downpayment.

(ii) The number of payments or period of repayment.

(iii) The amount of any payment.

(iv) The amount of any finance charge.

(2) An advertisement stating any of the terms in paragraph (c)(1) of this section shall state the following terms,[49] as applicable:

(i) The amount or percentage of the downpayment.

(ii) The terms of repayment.

(iii) The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

(d) *Catalogs and multiple-page advertisements.* (1) If a catalog or other multiple-page advertisement gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (c)(2) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly set forth; and

(ii) Any statement of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page on which the table or schedule begins.

(2) A catalog or multiple-page advertisement complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Subpart D—Miscellaneous

§ 226.25 Record retention.

(a) *General rule.* A creditor shall retain evidence of compliance with this regulation (other than advertising requirements under §§ 226.16 and 226.24) for 2 years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing the regulation may require creditors under their jurisdictions to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 108 of the act.

(b) *Inspection of records.* A creditor shall permit the agency responsible for enforcing this regulation with respect to that creditor to inspect its relevant records for compliance.

§ 226.26 Use of annual percentage rate in oral disclosures.

(a) *Open-end credit.* In an oral response to a consumer's inquiry about the cost of open-end credit, only the annual percentage rate or rates shall be stated, except that the periodic rate or rates also may be stated. If the annual percentage rate cannot be determined in advance because there are finance charges other than a periodic rate, the corresponding annual percentage rate shall be stated, and other cost information may be given.

(b) *Closed-end credit.* In an oral response to a consumer's inquiry about the cost of closed-end credit, only the annual percentage rate shall be stated, except that a simple annual rate or periodic rate also may be stated if it is applied to an unpaid balance. If the annual percentage rate cannot be determined in advance, the annual percentage rate for a sample transaction shall be stated, and other cost information for the consumer's specific transaction may be given.

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[49] An example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used.

§ 226.27 Spanish language disclosures.

All disclosures required by this regulation shall be made in the English language, except in the Commonwealth of Puerto Rico, where creditors may, at their option, make disclosures in the Spanish language. If Spanish disclosures are made, English disclosures shall be provided on the consumer's request, either in substitution for or in addition to the Spanish disclosures. This requirement for providing English disclosures on request shall not apply to advertisements subject to §§ 226.16 and 226.24 of this regulation.

§ 226.28 Effect on State laws.

(a) *Inconsistent disclosure requirements.* (1) State law requirements that are inconsistent with the requirements contained in chapter 1 (General provisions), chapter 2 (Credit transactions), or chapter 3 (Credit advertising) of the Act and the implementing provisions of this regulation are preempted to the extent of the inconsistency. A State law is inconsistent if it requires a creditor to make disclosures or take actions that contradict the requirements of the Federal law. A State law is contradictory if it requires the use of the same term to represent a different amount or a different meaning than the Federal law, or if it requires the use of a term different from that required in the Federal law to describe the same item. A creditor, state, or other interested party may request the Board to determine whether a State law requirement is inconsistent. After the Board determines that a state law is inconsistent, a creditor may not make disclosures using the inconsistent term or form.

(2)(i) State law requirements are inconsistent with the requirements contained in sections 161 (Correction of billing errors) or 162 (Regulation of credit reports) of the Act and the implementing provisions of this regulation and are preempted if they provide rights, responsibilities, or procedures for consumers or creditors that are different from those required by the Federal law. However, a State law that allows a consumer to inquire about an open-end credit account and imposes on the creditor an obligation to respond to such inquiry after the time allowed in the Federal law for the consumer to submit written notice of a billing error shall not be preempted in any situation where the time period for making written notice under this regulation has expired. If a creditor gives written notice of a consumer's rights under such State law, the notice shall state that reliance on the longer time period available under state law may result in the loss of important rights that could be preserved by acting more promptly under Federal law; it shall also explain that the state law provisions apply only after expiration of the time period for submitting a proper written notice of a billing error under the Federal law. If the state disclosures are made on the same side of a page as the required Federal disclosures, the state disclosures shall appear under a demarcation line below the Federal disclosures, and the Federal disclosures shall be identified by a heading indicating that they are made in compliance with Federal law.

(ii) State law requirements are inconsistent with the requirements contained in chapter 4 (Credit billing) of the Act (other than section 161 or 162) and the implementing provisions of this regulation and are preempted if the creditor cannot comply with State law without violating Federal law.

(iii) A State may request the Board to determine whether its law is inconsistent with chapter 4 of the Act and its implementing provisions.

(b) *Equivalent disclosure requirements.* If the Board determines that a disclosure required by State law (other than a requirement relating to the finance charge or annual percentage rate) is substantially the same in meaning as a disclosure required under the Act or this regulation, creditors in that State may make the State disclosure in lieu of the Federal disclosure. A creditor, State, or other interested party may request the Board to determine whether a State disclosure is substantially the same in meaning as a Federal disclosure.

(c) *Request for determination.* The procedures under which a request for a determination may be made under this section are set forth in Appendix A.

§ 226.29 State exemptions.

(a) *General rule.* Any State may apply to the Board to exempt a class of transactions within the State from the requirements of chapter 2 (Credit transactions) or chapter 4 (Credit billing) of the Act and the corresponding provisions of this regulation. The Board shall grant an exemption if it determines that:

(1) The State law is substantially similar to the Federal law or, in the case of chapter 4, affords the consumer greater protection than the Federal law; and

(2) There is adequate provision for enforcement.

(b) *Civil liability.* (1) No exemptions granted under this section shall extend to the civil liability provisions of sections 130 and 131 of the Act.

(2) If an exemption has been granted, the disclosures required by the applicable State law (except any additional requirements not imposed by Federal law) shall constitute the disclosures required by this Act.

(c) *Applications.* The procedures under which a State may apply for an exemption under this section are set forth in Appendix B.

[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981]

APPENDIX A—EFFECT ON STATE LAWS

Request for Determination

A request for a determination that a State law is inconsistent or that a State law is substantially the same as the Act and regulation shall be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall be made pursuant to the procedures herein and the Board's Rules of Procedure (12 CFR Part 262).

Supporting Documents

A request for a determination shall include the following items:

(1) The text of the State statute, regulation, or other document that is the subject of the request.

(2) Any other statute, regulation, or judicial or administrative opinion that implements, interprets, or applies the relevant provision.

(3) A comparison of the State law with the corresponding provision of the Federal law, including a full discussion of the basis for the requesting party's belief that the State provision is either inconsistent or substantially the same.

(4) Any other information that the requesting party believes may assist the Board in its determination.

Public Notice of Determination

Notice that the Board intends to make a determination (either on request or on its own motion) will be published in the FEDERAL REGISTER, with an opportunity for public comment, unless the Board finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decision.

Subject to the Board's Rules Regarding Availability of Information (12 CFR Part 261), all requests made, including any documents and other material submitted in support of the requests, will be made available for public inspection and copying.

Notice After Determination

Notice of a final determination will be published in the FEDERAL REGISTER, and the Board will furnish a copy of such notice to the party who made the request and to the appropriate State official.

Reversal of Determination

The Board reserves the right to reverse a determination for any reason bearing on the coverage or effect of State or Federal law.

Notice of reversal of a determination will be published in the FEDERAL REGISTER and a copy furnished to the appropriate State official.

[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981]

APPENDIX B—STATE EXEMPTIONS

Application

Any State may apply to the Board for a determination that a class of transactions subject to State law is exempt from the requirements of the Act and this regulation. An application shall be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and shall be signed by the appropriate State official. The application shall be made pursuant to the procedures herein and the Board's Rules of Procedure (12 CFR Part 262).

Supporting Documents

An application shall be accompanied by:

(1) The text of the State statute or regulation that is the subject of the application, and any other statute, regulation, or judicial or administrative opinion that implements, interprets, or applies it.

(2) A comparison of the State law with the corresponding provisions of the Federal law.

(3) The text of the State statute or regulation that provides for civil and criminal liability and administrative enforcement of the State law.

(4) A statement of the provisions for enforcement, including an identification of the State office that administers the relevant law, information on the funding and the number and qualifications of personnel engaged in enforcement, and a description of the enforcement procedures to be followed, including information on examination procedures, practices, and policies. If an exemption application extends to Federally chartered institutions, the applicant must furnish evidence that arrangements have been made with the appropriate Federal agencies to ensure adequate enforcement of State law in regard to such creditors.

(5) A statement of reasons to support the applicant's claim that an exemption should be granted.

Public Notice of Application

Notice of an application will be published, with an opportunity for public comment, in the FEDERAL REGISTER, unless the Board finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decision.

Subject to the Board's Rules Regarding Availability of Information (12 CFR Part 261), all applications made, including any documents and other material submitted in support of the applications, will be made available for public inspection and copying. A copy of the application also will be made available at the Federal Reserve Bank of each district in which the applicant is situated.

Favorable Determination

If the Board determines on the basis of the information before it that an exemption should be granted, notice of the exemption will be published in the FEDERAL REGISTER, and a copy furnished to the applicant and to each Federal official responsible for administrative enforcement.

The appropriate State official shall inform the Board within 30 days of any change in its relevant law or regulations. The official shall file with the Board such periodic reports as the Board may require.

The Board will inform the appropriate State official of any subsequent amendments to the Federal law, regulation, interpretations, or enforcement policies that might require an amendment to State law, regulation, interpretations, or enforcement procedures.

Adverse Determination

If the Board makes an initial determination that an exemption should not be granted, the Board will afford the applicant a reasonable opportunity to demonstrate further that an exemption is proper. If the Board ultimately finds that an exemption should not be granted, notice of an adverse determination will be published in the FEDERAL REGISTER and a copy furnished to the applicant.

Revocation of Exemption

The Board reserves the right to revoke an exemption if at any time it determines that the standards required for an exemption are not met.

Before taking such action, the Board will notify the appropriate State official of its intent, and will afford the official such opportunity as it deems appropriate in the circumstances to demonstrate that revocation is improper. If the Board ultimately finds that revocation is proper, notice of the Board's intention to revoke such exemption will be published in the FEDERAL REGISTER with a reasonable period of time for interested persons to comment.

Notice of revocation of an exemption will be published in the FEDERAL REGISTER. A copy of such notice will be furnished to the appropriate State official and to the Federal officials responsible for enforcement. Upon revocation of an exemption, creditors in that State shall then be subject to the requirements of the Federal law.

APPENDIX C—ISSUANCE OF STAFF INTERPRETATIONS

Official Staff Interpretations

Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this regulation. These interpretations provide the protection afforded under section 130(f) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation which will be amended periodically.

Requests for Issuance of Official Staff Interpretations

A request for an official staff interpretation shall be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

Scope of Interpretations

No staff interpretations will be issued approving creditors' forms, statements, or calculation tools or methods. This restriction does not apply to forms, statements, tools, or methods whose use is required or sanctioned by a government agency.

APPENDIX D—MULTIPLE ADVANCE CONSTRUCTION LOANS

Section 226.17(c)(6) permits creditors to treat multiple advance loans to finance construction of a dwelling that may be permanently financed by the same creditor either as a single transaction or as more than one transaction. If the actual schedule of advances is not known, the following methods may be used to estimate the interest portion of the finance charge and the annual percentage rate and to make disclosures. If the creditor chooses to disclose the construction phase separately, whether interest is payable periodically or at the end of construction, Part I may be used. If the creditor chooses to disclose the construction and the permanent financing as one transaction, Part II may be used.

Part I—Construction period disclosed separately.

A. If interest is payable only on the amount actually advanced for the time it is outstanding:

1. Estimated interest—Assume that one-half of the commitment amount is outstanding at the contract interest rate for the entire construction period.

2. Estimated annual percentage rate—Assume a single payment loan that matures at the end of the construction period. The finance charge is the sum of the estimated interest and any prepaid finance charge. The amount financed for computation purposes is determined by subtracting any prepaid finance charge from one-half of the commitment amount.

3. Repayment schedule—The number and amounts of any interest payments may be omitted in disclosing the payment schedule under § 226.18(g). The fact that interest payments are required and the timing of such payments shall be disclosed.

4. Amount financed—The amount financed for disclosure purposes is the entire commitment amount less any prepaid finance charge.

B. If interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursement:

1. Estimated interest—Assume that the entire commitment amount is outstanding at the contract interest rate for the entire construction period.

2. Estimated annual percentage rate—Assume a single payment loan that matures at the end of the construction period. The finance charge is the sum of the estimated interest and any prepaid finance charge. The amount financed for computation purposes is determined by subtracting any prepaid finance charge from one-half of the commitment amount.

3. Repayment schedule—Interest payments shall be disclosed in making the repayment schedule disclosure under § 226.18(g).

4. Amount financed - The amount financed for disclosure purposes is the entire commitment amount less any prepaid finance charge.

Example:

Assume a $50,000 loan commitment at 10.5% interest with a 5-month construction period and a prepaid finance charge of 2 points.

	(A)	(B)
Estimated Interest:	$25,000 x .105 ÷ 12 x 5 = $1,093.75	$50,000 x .105 ÷ 12 x 5 = $2,187.50
Estimated APR:	$\frac{(1\ 093.75 + 1{,}000)}{(25{,}000 - 1{,}000)} \times 100 \div 5 \times 12 =$ 20.94%	$\frac{(2{,}187.50 + 1{,}000)}{(25{,}000 - 1{,}000)} \times 100 \div 5 \times 12 =$ 31.88%
Disclosures:		
Amount financed	$49,000.00	$49,000.00
Prepaid finance charge	1,000.00	1,000.00
FINANCE CHARGE (Estimate)	2,093.75	3,187.50
ANNUAL PERCENTAGE RATE (Estimate)	20.94%	31.88%
Repayment:	One payment of principal of $50,000 on 12-12-80. Interest on the amount of credit outstanding will be paid monthly.	4 monthly payments of $437.50, beginning 8-12-80, and a final payment of $50,437.50 on 12-12-80.
Total of payments (Estimate)	$51,093.75	$52,187.50

Part II - Construction and permanent financing disclosed as one transaction.

A. The creditor shall estimate the interest payable during the construction period to be included in the total finance charge as follows:

1. If interest is payable only on the amount actually advanced for the time it is outstanding, assume that one-half of the commitment amount is outstanding at the contract interest rate for the entire construction period.

2. If interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursement, assume that the entire commitment amount is outstanding at the contract rate for the entire construction period.

B. The creditor shall compute the estimated annual percentage rate as follows:

1. Estimated interest payable during the construction period shall be treated for computation purposes as a prepaid finance charge (although it shall not be treated as a prepaid finance charge for disclosure purposes).

2. The number of payments shall not include any payments of interest only that are made during the construction period.

3. The first payment period shall consist of one-half of the construction period plus the period between the end of the construction period and the first amortization payment.

C. The creditor shall disclose the repayment schedule as follows:

1. For loans under paragraph A.1. of Part II, without reflecting the number or amounts of payments of interest only that are made during the construction period. The fact that interest payments must be made and the timing of such payments shall be disclosed.

2. For loans under paragraph A.2. of Part II, including any payments of interest only that are made during the construction period.

D. The creditor shall disclose the amount financed as the entire commitment amount less any prepaid finance charge.

Example:

Assume a $50,000 loan commitment at 10.5% interest with a 5-month construction period and a prepaid finance charge of 2 points, followed by 30-year permanent financing at the same rate with monthly amortization payments of $457.37.

Computation of Estimated APR

	Interest on Amount Advanced		Interest on Entire Commitment	
Estimated construction interest:				
$25,000 x .105 ÷ 12 x 5 =		$1,093.75	$50,000 x .105 ÷ 12 x 5 =	$2,187.50
Estimated total finance charge:				
360 x $457.37 =	$164,653.20		$164,653.20	
Principal	- 50,000.00		- 50,000.00	
Interest on Permanent Fin.	114,653.20		114,653.20	
Construction Interest	+ 1,093.75		+ 2,187.50	
Points	+ 1,000.00	$116,746.95	+ 1,000.00	$117,840.70

Estimated amount financed:				
Principal	$ 50,000.00		$ 50,000.00	
Construction Interest	- 1,093.75		- 2,187.50	
Points	- 1,000.00	$ 47,906.25	- 1,000.00	$ 46,812.50
Number of payments		360		360
Payment amount		$ 457.37		$ 457.37
First payment period (5 + 2) + 1		3 1/2 months	(5 + 2) + 1	3 1/2 months
Estimated APR (Actuarial)		10.75%		11.03%
Estimated APR (Volume I):				
$\frac{11,674,695}{47,906.25} = 243.70 = FC/\$100$			$\frac{11,784,070}{46,812.50} = 251.73 = FC/\$100$	
First period adjustment = 3 mo., 15 days = +5.0			First period adjustment = 3 mo., 15 days = +5.0	
Using 365 payment line, the figure closest to 243.70 is 247.00, which corresponds to an APR of		11%	Using 365 payment line, the figure closest to 251.73 is 253.93, which corresponds to an APR of	11.25%
		Disclosures		
Amount financed		$ 49,000.00		$ 49,000.00
Prepaid finance charge		1,000.00		1,000.00
FINANCE CHARGE (Estimate)		116,746.95		117,840.70
ANNUAL PERCENTAGE RATE (Estimate)		11%		11.25%
Repayment: Interest on the amount of credit outstanding during the construction period will be paid monthly, followed by 360 monthly payments of $457.37, beginning 1-12-81.			5 monthly payments of $437.50 beginning 8-12-80, followed by 360 monthly payments of $457.37 beginning 1-12-81.	
Total of payments (Estimate)		$165,746.95		$166,840.70

[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981]

APPENDIX E—RULES FOR CARD ISSUERS THAT BILL ON A TRANSACTION-BY-TRANSACTION BASIS

The following provisions of Subpart B apply if credit cards are issued and (1) the card issuer and the seller are the same or related persons; (2) no finance charge is imposed; (3) consumers are billed in full for each use of the card on a transaction-by-transaction basis, by means of an invoice or other statement reflecting each use of the card; and (4) no cumulative account is maintained which reflects the transactions by each consumer during a period of time, such as a month:

Section 226.6(d), and, as applicable, § 226.6(b) and (c). The disclosure required by § 226.6(b) shall be limited to those charges that are or may be imposed as a result of the deferral of payment by use of the card, such as late payment or delinquency charges.

Section 226.7(b) and § 226.7(k). Creditors may comply by placing the required disclosures on the invoice or statement sent to the consumer for each transaction.

Section 226.9(a). Creditors may comply by mailing or delivering the statement required by § 226.6(d) (See Appendix G-3) to each consumer receiving a transaction invoice during a one-month period chosen by the card issuer or by sending either the statement prescribed by § 226.6(d) or an alternative billing error rights statement substantially similar to that in Appendix G-4, with each invoice sent to a consumer.

Section 226.9(c).

Section 226.10.

Section 226.11. This section applies when a card issuer receives a payment or other credit that exceeds by more than $1 the amount due, as shown on the transaction invoice. The requirement to credit amounts to an account may be complied with by other reasonable means, such as by a credit memorandum. Since no periodic statement is provided, a notice of the credit balance shall be sent to the consumer within a reasonable period of time following its occurrence unless a refund of the credit balance is mailed or delivered to the consumer within 7 business days of its receipt by the card issuer.

Section 226.12 including § 226.12(c) and (d), as applicable. Section 226.12(e) is inapplicable.

Section 226.13, as applicable. All references to "periodic statement" shall be read to indicate the invoice or other statement for the relevant transaction. All actions with regard to correcting and adjusting a consumer's account may be taken by issuing a refund or a new invoice, or by other appropriate means consistent with the purposes of the section.

Section 226.15, as applicable.

[46 FR 20892, Apr. 7, 1981, as amended at 46 FR 60190, Dec. 9, 1981]

APPENDIX F—ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CERTAIN OPEN-END CREDIT PLANS

In determining the denominator of the fraction under § 226.14(c)(3), no amount will be used more than once when adding the sum of the balances[1] subject to periodic rates to the sum of the amounts subject to specific transaction charges. In every case, the full amount of transactions subject to specific transaction charges shall be included in the denominator. Other balances or parts of balances shall be included according to the manner of determining the balance subject to a periodic rate, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance—none.

A specific transaction of $100 occurs on the first day of the billing cycle. The average daily balance is $100. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1½% applicable to the average daily balance. The numerator is the amount of the finance charge, which is $4.50. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transactions (such excess in this case is 0), totaling $100.

The annual percentage rate is the quotient (which is 4½%) multiplied by 12 (the number of months in a year), i.e., 54%.

2. Previous balance—$100.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1½% applicable to the average daily balance. The numerator is the amount of the finance charge which is $5.25. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transaction (such excess in this case is $50), totaling $150. As explained in example 1, the annual percentage rate is 3½% x 12 = 42%.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is $4.50 and the denominator is $200 (the amount of the transaction, $100,

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[1] Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase "sum of the balances" shall also mean the "average of daily balances."

plus the balance subject only to the periodic rate, the $100 previous balance). As explained in example 1, the annual percentage rate is 2¼% x 12 = 27%.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credits) and the consumer made a payment of $50 at the midpoint of the billing cycle, the numerator is $3.75 and the denominator is $150 (the amount of the transaction, $100, plus the balance subject to the periodic rate, the $50 adjusted balance). As explained in example 1, the annual percentage rate is 2½% x 12 = 30%.

5. Previous balance—$100.

A specific transaction (check) of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. The specific transaction charge is $.25 per check. The periodic rate is 1½% applied to the average daily balance. The numerator is the amount of the finance charge, which is $2.50 and includes the $.25 check charge and the $2.25 resulting from the application of the periodic rate. The denominator is the full amount of the specific transaction (which is $100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is $50), totaling $150. As explained in example 1, the annual percentage rate would be 1⅔% x 12 = 20%.

6. Previous balance—none.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $50. The specific transaction charge is 3% of the transaction amount or $3.00. The periodic rate is 1½% per month applied to the average daily balance. The numerator is the amount of the finance charge, which is $3.75, including the $3.00 transaction charge and $.75 resulting from application of the periodic rate. The denominator is the full amount of the specific transaction ($100) plus the amount by which the balance subject to the periodic rate exceeds the amount of the transaction ($0). Where the specific transaction amount exceeds the balance subject to the periodic rate, the resulting number is considered to be zero rather than a negative number ($50 − $100 = −$50). The denominator, in this case, is $100. As explained in example 1, the annual percentage rate is 3¾% x 12 = 45%.

APPENDIX G—OPEN-END MODEL FORMS AND CLAUSES

G-1 Balance Computation Methods Model Clauses (§§ 226.6 and 226.7).
G-2 Liability for Unauthorized Use Model Clause (§ 226.12).
G-3 Long Form Billing Error Rights Model Form (§§ 226.6 and 226.9).
G-4 Alternative Billing Error Rights Model Form (§ 226.9).
G-5 Rescission Model Form (when opening an account) (§ 226.15).
G-6 Rescission Model Form (for each transaction) (§ 226.15).
G-7 Rescission Model Form (when increasing the credit limit) (§ 226.15).
G-8 Rescission Model Form (when adding a security interest) (§ 226.15).
G-9 Rescission Model Form (when increasing the security) (§ 226.15).

G-1—Balance Computation Methods Model Clauses

(a) Adjusted balance method
We figure [a portion of] the finance charge on your account by applying the periodic rate to the "adjusted balance" of your account. We get the "adjusted balance" by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid finance charges and] any payments and credits received during the present billing cycle.

(b) Previous balance method
We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle [minus any unpaid finance charges.] We do not subtract any payments or credits received during the billing cycle. [The amount of payments and credits to your account this billing cycle was $______________.]

(c) Average daily balance method (excluding current transactions)
We figure [a portion of] the finance charge on your account by applying the periodic rate to the "average daily balance" of your account (excluding current transactions). To get the "average daily balance" we take the beginning balance of your account each day and subtract any payments or credits [and any unpaid finance charges]. We do not add in any new [purchases/advances/loans]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

(d) Average daily balance method (including current transactions)
We figure [a portion of] the finance charge on your account by applying the periodic rate to the "average daily balance" of your account (including current transactions). To get the "average daily balance" we take the beginning balance of your account each day, add any new [purchases/advances/loans], and subtract any payments or credits, [and unpaid finance charges]. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the "average daily balance."

G-2—Liability for Unauthorized Use Model Clause

You may be liable for the unauthorized use of your credit card [or other term that describes the credit card.] You will not be liable for unauthorized use that occurs after you notify [name of card issuer or its designee] at [address], orally or in writing, of the loss, theft, or possible unauthorized use. In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder.]

G-3—Long Form Billing Error Rights Model Form

YOUR BILLING RIGHTS
KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address listed on your bill]. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

(a) You must have made the purchase in your home state or, if not within your home state, within 100 miles of your current mailing address; and
(b) The purchase price must have been more than $50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

G-4—Alternative Billing Error Rights Model Form

BILLING RIGHTS SUMMARY

In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address shown on your bill] as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

Special Rule for Credit Card Purchases

If you have a problem with the quality of
you purchased with a credit card, and y
faith to correct the problem with the m
have to pay the remaining amount due or
You have this protection only when the p
than $50 and the purchase was made in y
in 100 miles of your mailing address. (If
merchant, or if we mailed you the advertis
or services, all purchases are covered re
location of purchase.)

goods or services that
ou have tried in good
erchant, you may not
the goods or services.
urchase price was more
our home state or with-
we own or operate the
ement for the property
gardless of amount or

G-5—Rescission Model Form (When Opening An Account)

NOTICE OF RIGHT TO CANCEL

1. Your Right to Cancel.
We have agreed to establish an open-end credit account for you, and you have agreed to give us a [mortgage/lien/security interest] [on/in] your home as security for the account. You have a legal right under federal law to cancel the account, without cost, within three business days after the latest of the following events:

(1) the opening date of your account which is

________________________; or

(2) the date you received your Truth-in-Lending disclosures; or
(3) the date you received this notice of your right to cancel the account.

If you cancel the account, the [mortgage/lien/security interest] [on/in] your home is also cancelled. Within 20 days of receiving your notice, we must take the necessary steps to reflect the fact that the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must return to you any money or property you have given to us or to anyone else in connection with the account.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

2. How to Cancel.
If you decide to cancel the account, you may do so by notifying us, in writing, at

(creditor's name and business address)

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of (date)
(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

____
Consumer's Signature Date

G-6—Rescission Model Form (For Each Transaction)

NOTICE OF RIGHT TO CANCEL

1. Your Right to Cancel.
We have extended credit to you under your open-end credit account. This extension of credit will increase the amount you owe on your account. We already have a [mortgage/lien/security interest] [on/in] your home as security for your account. You have a legal right under federal law to cancel the extension of credit, without cost, within three business days after the latest of the following events:

(1) the date of the additional extension of credit which is

_______________________________; or

(2) the date you received your Truth-in-Lending disclosures; or

(3) the date you received this notice of your right to cancel the additional extension of credit.

If you cancel the additional extension of credit, your cancellation will only apply to the additional amount and to any increase in the [mortgage/lien/security interest] that resulted because of the additional amount. It will not affect the amount you presently owe, and it will not affect the [mortgage/lien/security interest] we already have [on/in] your home. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect the fact that any increase in the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this extension of credit.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

2. How to Cancel.
If you decide to cancel the additional ex
may do so by notifying us, in writing, at

(creditor's name and business

You may use any written statement that
you and states your intention to cancel
notice by dating and signing below. Keep
no matter how you notify us because it
formation about your rights.

If you cancel by mail or telegram, you m

later than midnight of
(or midnight of the third business day fo
three events listed above). If you send or deliver
some other way, it must be delivered to the abov
time.

I WISH TO CANCEL.

____
Consumer's Signature

G-7—Rescission Model Form (When Increasing the Credit Limit)

NOTICE OF RIGHT TO CANCEL

1. Your Right to Cancel.

We have agreed to increase the credit limit on your open-end credit account. We have a [mortgage/lien/security interest] [on/in] your home as security for your account. Increasing the credit limit will increase the amount of the [mortgage/lien/security interest] [on/in] your home. You have a legal right under federal law to cancel the increase in your credit limit, without cost, within three business days after the latest of the following events:

(1) the date of the increase in your credit limit which is

______________________________ ; or

(2) the date you received your Truth-in-Lending disclosures; or

(3) the date you received this notice of your right to cancel the increase in your credit limit.

If you cancel, your cancellation will apply only to the increase in your credit limit and to the [mortgage/lien/security interest] that resulted from the increase in your credit limit. It will not affect the amount you presently owe, and it will not affect the [mortgage/lien/security interest] we already have [on/in] your home. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect the fact that any increase in the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this increase.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

2. How to Cancel.

If you decide to cancel the increase in your credit limit, you may do so by notifying us, in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no

later than midnight of (date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

______________________________ ______________

Consumer's Signature Date

G-8—Rescission Model Form (When Adding a Security Interest)

NOTICE OF RIGHT TO CANCEL

1. Your Right to Cancel.
You have agreed to give us a [mortgage/lien/security interest] [on/in] your home as security for your existing open-end credit account. You have a legal right under federal law to cancel the [mortgage/lien/security interest], without cost, within three business days after the latest of the following events:

(1) the date of the [mortgage/lien/security interest]

which is ___________________________; or

(2) the date you received your Truth-in-Lending disclosures; or

(3) the date you received this notice of your right to cancel the [mortgage/lien/security interest].

If you cancel the [mortgage/lien/security interest], your cancellation will apply only to the [mortgage/lien/security interest]. It will not affect the amount you owe on your account. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect that any [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this increase.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may make the offer at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

2. How to Cancel.
If you decide to cancel the [mortgage/lien/security interest], y
may do so by notifying us, in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated
you and states your intention to cancel, or you may use t
notice by dating and signing below. Keep one copy of this not
no matter how you notify us because it contains important
formation about your rights.

If you cancel by mail or telegram, you must send the notice

later than midnight of (date)
(or midnight of the third business day following the latest of
three events listed above). If you send or deliver your writ
notice to cancel some other way, it must be delivered to
above address no later than that time.

I WISH TO CANCEL.

____________________________ __________
Consumer's Signature Date

G-9—Rescission Model Form (When Increasing the Security)

NOTICE OF RIGHT TO CANCEL

1. Your Right to Cancel.

You have agreed to increase the amount of the [mortgage/lien/security interest] [on/in] your home that we hold as security for your open-end credit account. You have a legal right under federal law to cancel the increase, without cost, within three business days after the latest of the following events:

(1) the date of the increase in the security which is

______________________________; or

(2) the date you received your Truth-in-Lending disclosures; or

(3) the date you received this notice of your right to cancel the increase in the security.

If you cancel the increase in the security, your cancellation will apply only to the increase in the amount of the [mortgage/lien/security interest]. It will not affect the amount you presently owe on your account, and it will not affect the [mortgage/lien/security interest] we already have [on/in] your home. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect that any increase in the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this increase.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

2. How to Cancel.

If you decide to cancel the increase in security, you may do so by notifying us, in writing, at

(creditor's name and business address)

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice no matter how you notify us because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no

later than midnight of (date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

______________________________ ______________

Consumer's Signature Date

[46 FR 20892, Apr. 7, 1981, as amended at 46 FR 60191, Dec. 9, 1981]

APPENDIX H—CLOSED-END MODEL FORMS AND CLAUSES

H-1—Credit Sale Model Form (§226.18)

H-2—Loan Model Form (§226.18)

H-3—Amount Financed Itemization Model Form (§226.18(c))

H-4—Variable Rate Model Clauses (§226.18(f))

H-5—Demand Feature Model Clauses (§226.18(i))

H-6—Assumption Policy Model Clause (§226.18(q))

H-7—Required Deposit Model Clause (§226.18(r))

H-8—Rescission Model Form (General) (§226.23)

H-9—Rescission Model Form (Refinancing) (§226.23)

H-10—Credit Sale Sample

H-11—Installment Loan Sample

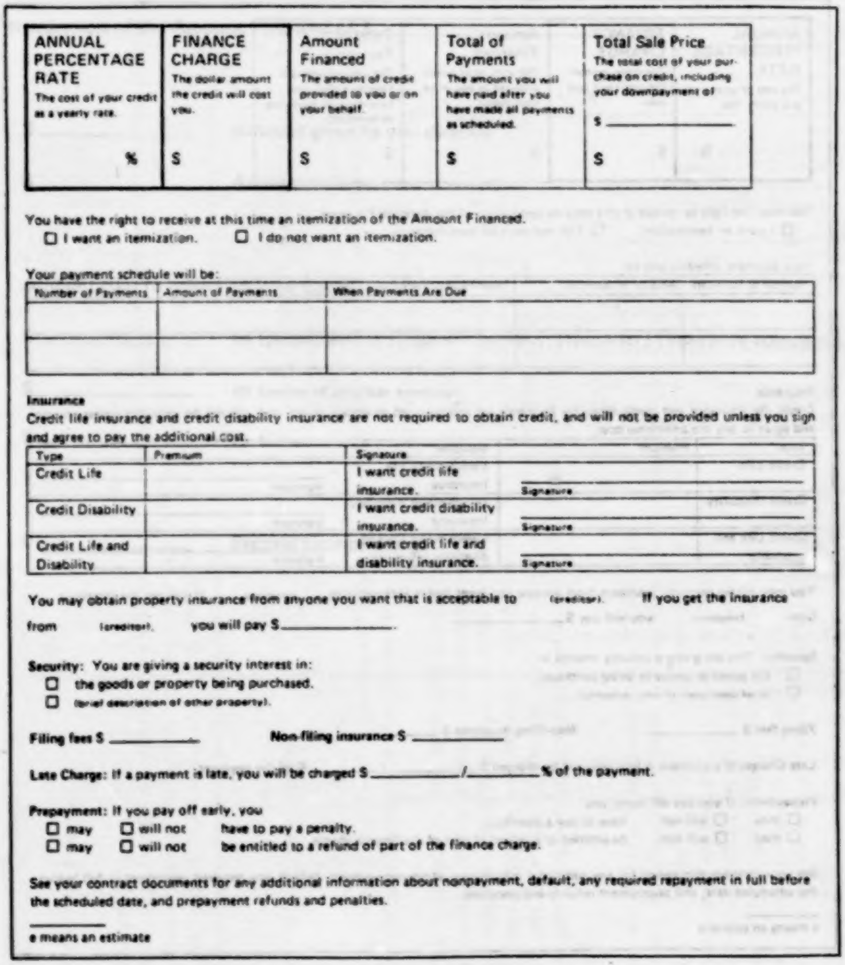
H-12—Refinancing Sample

H-13—Mortgage with Demand Feature Sample

H-14—Variable Rate Mortgage Sample

H-15—Graduated Payment Mortgage Sample

H-1—Credit Sale Model Form



ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost you.	**Amount Financed** The amount of credit provided to you or on your behalf.	**Total of Payments** The amount you will have paid after you have made all payments as scheduled.	**Total Sale Price** The total cost of your purchase on credit, including your downpayment of $ __________
%	$	$	$	$

You have the right to receive at this time an itemization of the Amount Financed.
☐ I want an itemization. ☐ I do not want an itemization.

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Insurance

Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature	
Credit Life		I want credit life insurance.	__________ Signature
Credit Disability		I want credit disability insurance.	__________ Signature
Credit Life and Disability		I want credit life and disability insurance.	__________ Signature

You may obtain property insurance from anyone you want that is acceptable to (creditor). If you get the insurance from (creditor), you will pay $__________.

Security: You are giving a security interest in:
☐ the goods or property being purchased.
☐ (brief description of other property).

Filing fees $ ________ **Non-filing insurance** $ ________

Late Charge: If a payment is late, you will be charged $________/________% of the payment.

Prepayment: If you pay off early, you
☐ may ☐ will not have to pay a penalty.
☐ may ☐ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

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e means an estimate

H-2—Loan Model Form

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost you.	**Amount Financed** The amount of credit provided to you or on your behalf.	**Total of Payments** The amount you will have paid after you have made all payments as scheduled.
%	$	$	$

You have the right to receive at this time an itemization of the Amount Financed.

☐ I want an itemization. ☐ I do not want an itemization.

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Insurance

Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature	
Credit Life		I want credit life insurance.	Signature
Credit Disability		I want credit disability insurance.	Signature
Credit Life and Disability		I want credit life and disability insurance.	Signature

You may obtain property insurance from anyone you want that is acceptable to (creditor). **If you get the insurance from** (creditor), **you will pay $__________.**

Security: You are giving a security interest in:

☐ the goods or property being purchased.

☐ (brief description of other property).

Filing fees $__________ **Non-filing insurance $__________**

Late Charge: If a payment is late, you will be charged $__________/__________% of the payment.

Prepayment: If you pay off early, you

☐ may ☐ will not have to pay a penalty.

☐ may ☐ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

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e means an estimate

H-3—Amount Financed Itemization Model Form

Itemization of the Amount Financed of $____________________

$______________ Amount given to you directly

$______________ Amount paid on your account

Amount paid to others on your behalf

$______________ to [public officials] [credit bureau] [appraiser] [insurance company]

$______________ to (name of another creditor)

$______________ to (other)

$______________ Prepaid finance charge

H-4—Variable Rate Model Clauses

The annual percentage rate may increase during the term of this transaction if:
  [the prime interest rate of (creditor) increases.]
  [the balance in your deposit account falls below $________.]
  [you terminate your employment with (employer).]

[The interest rate will not increase above ________%.]
[The maximum interest rate increase at one time will be ________%.]
[The rate will not increase more than once every (time period).]

Any increase will take the form of:
  [higher payment amounts.]
  [more payments of the same amount.]
  [a larger amount due at maturity.]

Example based on the specific transaction
[If the interest rate increases by ________% in (time period),
  [your regular payments will increase to $________.]
  [you will have to make ______ additional payments.]
  [your final payment will increase to $________.]]

Example based on a typical transaction
[If your loan were for $________ at ________% for (term) and the rate increased to ________% in (time period),
  [your regular payments would increase by $________.]
  [you would have to make ______ additional payments.]
  [your final payment would increase by $________.]]

H-5—Demand Feature Model Clauses

This obligation [is payable on demand.]
  [has a demand feature.]
[All disclosures are based on an assumed maturity of one year.]

H-6—Assumption Policy Model Clause

Assumption: Someone buying your house [may, subject to conditions, be allowed to] [cannot] assume the remainder of the mortgage on the original terms.

H-7—Required Deposit Model Clause

The annual percentage rate does not take into account your required deposit.

H-8—Rescission Model Form (General)

NOTICE OF RIGHT TO CANCEL

Your Right to Cancel

You are entering into a transaction that will result in a [mortgage/lien/ security interest] [on/in] your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

(1) the date of the transaction, which is

______________________________; or

(2) the date you received your Truth in Lending disclosures; or

(3) the date you received this notice of your right to cancel.

If you cancel the transaction, the [mortgage/lien/security interest] is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the [mortgage/lien/security interest] [on/in] your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no

later than midnight of (date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

______________________________ ____________

Consumer's Signature Date

H-9—Rescission Model Form (Refinancing)

NOTICE OF RIGHT TO CANCEL

Your Right to Cancel

You are entering into a new transaction to increase the amount of credit provided to you. We acquired a [mortgage/lien/security interest] [on/in] your home under the original transaction and will retain that [mortgage/lien/security interest] in the new transaction. You have a legal right under federal law to cancel the new transaction, without cost, within three business days from whichever of the following events occurs last:

(1) the date of the new transaction, which is

______________________________; or

(2) the date you received your new Truth in Lending disclosures; or

(3) the date you received this notice of your right to cancel.

If you cancel the new transaction, your cancellation will apply only to the increase in the amount of credit. It will not affect the amount that you presently owe or the [mortgage/lien/security interest] we already have [on/in] your home. If you cancel, the [mortgage/lien/security interest] as it applies to the increased amount is also cancelled. Within 20 calendar days after we receive your notice of cancellation of the new transaction, we must take the steps necessary to reflect the fact that our [mortgage/lien/security interest] [on/in] your home no longer applies to the increase of credit. We must also return any money you have given to us or anyone else in connection with the new transaction.

You may keep any money we have given you in the new transaction until we have done the things mentioned above, but you must then offer to return the money at the address below. If we do not take possession of the money within 20 calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel the new transaction, you may do so by notifying us in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no

later than midnight of (date)

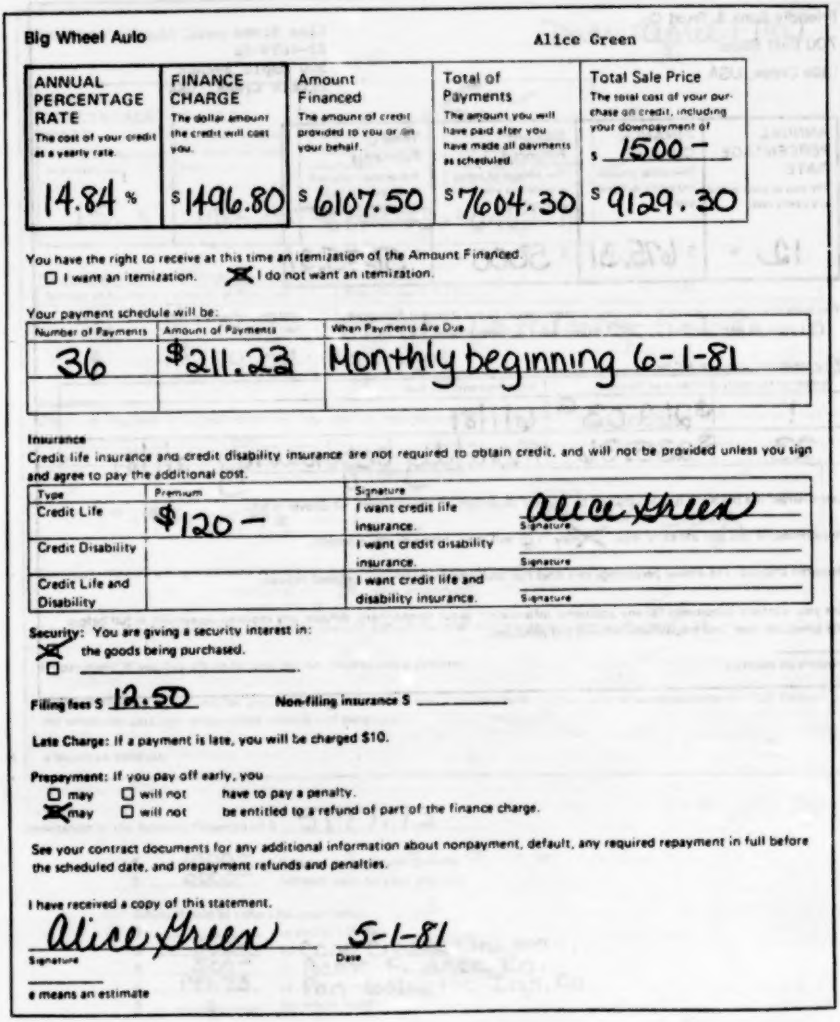
(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

______________________________ ____________

Consumer's Signature Date

H-10—Credit Sale Sample



Big Wheel Auto Alice Green

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your downpayment of $ 1500 —
14.84 %	$1496.80	$6107.50	$7604.30	$9129.30

You have the right to receive at this time an itemization of the Amount Financed.
☐ I want an itemization. ☒ I do not want an itemization.

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
36	$211.23	Monthly beginning 6-1-81

Insurance
Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life	$120 —	I want credit life insurance. Alice Green Signature
Credit Disability		I want credit disability insurance. Signature
Credit Life and Disability		I want credit life and disability insurance. Signature

Security: You are giving a security interest in:
☒ the goods being purchased.
☐ ____________________

Filing fees $ 12.50 **Non-filing insurance $** ________

Late Charge: If a payment is late, you will be charged $10.

Prepayment: If you pay off early, you
☐ may ☐ will not have to pay a penalty.
☒ may ☐ will not be entitled to a refund of part of the finance charge.

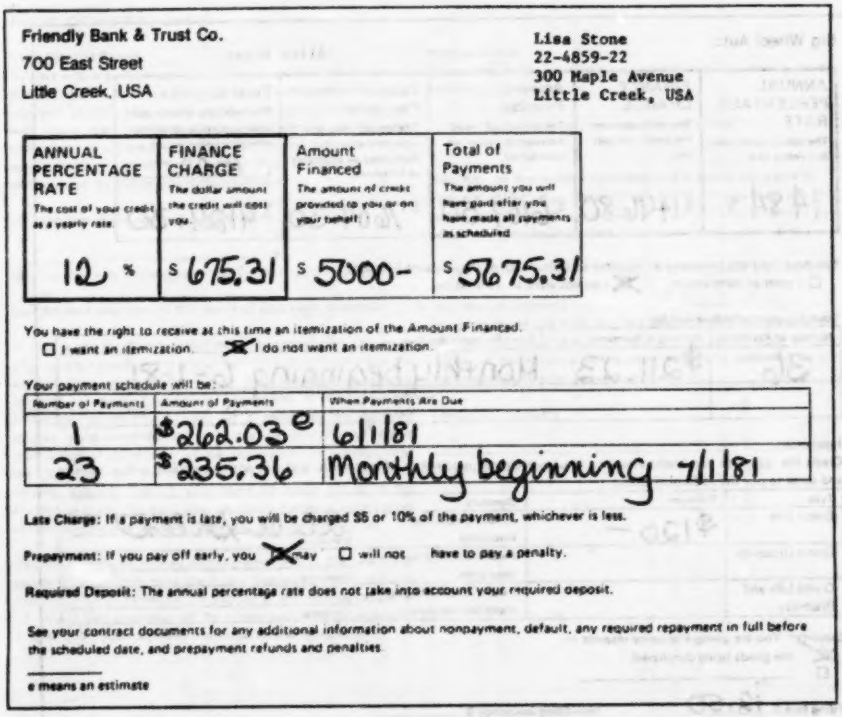
See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I have received a copy of this statement.

Alice Green 5-1-81
Signature Date

e means an estimate

H-11—Installment Loan Sample



Friendly Bank & Trust Co.
700 East Street
Little Creek, USA

Lisa Stone
22-4859-22
300 Maple Avenue
Little Creek, USA

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost you.	**Amount Financed** The amount of credit provided to you or on your behalf.	**Total of Payments** The amount you will have paid after you have made all payments as scheduled.
12 %	$ 675.31	$ 5000-	$ 5675.31

You have the right to receive at this time an itemization of the Amount Financed.
☐ I want an itemization. ☒ I do not want an itemization.

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
1	$262.03 e	6/1/81
23	$235.36	Monthly beginning 7/1/81

Late Charge: If a payment is late, you will be charged $5 or 10% of the payment, whichever is less.

Prepayment: If you pay off early, you ☒ may ☐ will not have to pay a penalty.

Required Deposit: The annual percentage rate does not take into account your required deposit.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

e means an estimate

H-12—Refinancing Sample

Everyone's Credit Union

Date: April 1, 1981

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
15 %	$1285.06	$5177.73	$6462.79

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
35	$179.53	monthly starting 5-1-81
1	$179.24	4-1-84

Insurance
Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature	
Credit Life		I want credit life insurance.	Signature
Credit Disability	$177.73	I want credit disability insurance.	Joseph Day Signature

Security: You are giving a security interest in: ☐ the goods or property being purchased.
☒ your automobile.

Late Charge: If a payment is late, you will be charged 20% of the interest due with a minimum charge of $.05.

Prepayment: If you pay off early, you will not have to pay a penalty.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

e means an estimate

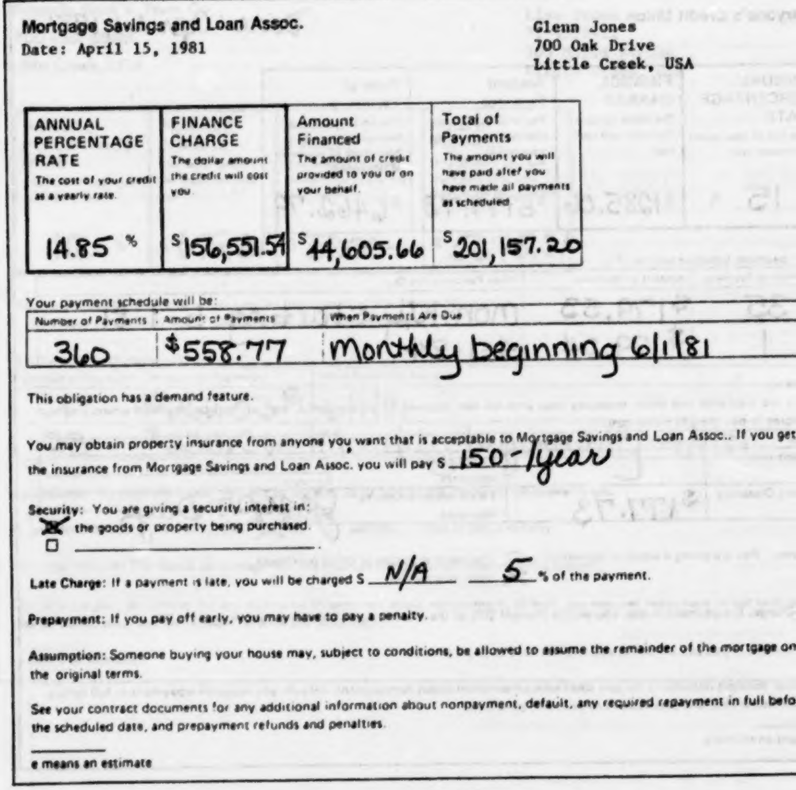
Itemization of the Amount Financed of $ 5177.73

$ 1000-	Amount given to you directly
$ 3000-	Amount paid on your account

Amount paid to others on your behalf

$	to public officials
$ 500-	to Coop Credit Union
$ 500-	to Acme Finance Co.
$ 177.73	to Pan-Galactic Ins. Co.
$	for credit report
$	Prepaid finance charge

H-13—Mortgage with Demand Feature Sample



Mortgage Savings and Loan Assoc.
Date: April 15, 1981

Glenn Jones
700 Oak Drive
Little Creek, USA

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
14.85 %	$156,551.54	$44,605.66	$201,157.20

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
360	$558.77	Monthly beginning 6/1/81

This obligation has a demand feature.

You may obtain property insurance from anyone you want that is acceptable to Mortgage Savings and Loan Assoc.. If you get the insurance from Mortgage Savings and Loan Assoc. you will pay $ 150-/year

Security: You are giving a security interest in:
☒ the goods or property being purchased.
☐ ______________________.

Late Charge: If a payment is late, you will be charged $ N/A 5 % of the payment.

Prepayment: If you pay off early, you may have to pay a penalty.

Assumption: Someone buying your house may, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full befo the scheduled date, and prepayment refunds and penalties.

e means an estimate

H-14—Variable Rate Mortgage Sample

State Savings and Loan Assoc.

Anne Jones
600 Pine Lane
Little Creek, USA

Account number: 210802-47

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
15.07 %	$ 157,155.20	$ 44,002–	$ 201,157.20

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
360	$ 558.77	Monthly beginning 6-1-81

Variable Rate
The annual percentage rate may increase during the term of this transaction if the prime rate of State Savings and Loan Assoc. increases. The rate may not increase more often than once a year, and may not increase by more than 1% annually. The interest rate will not increase above 19.75 %. Any increase will take the form of higher payment amounts. If the interest rate increases by 1 % in one year, your regular payment would increase to $ 594.51

Security: You are giving a security interest in the property being purchased.

Late Charge: If a payment is late, you will be charged 5% of the payment.

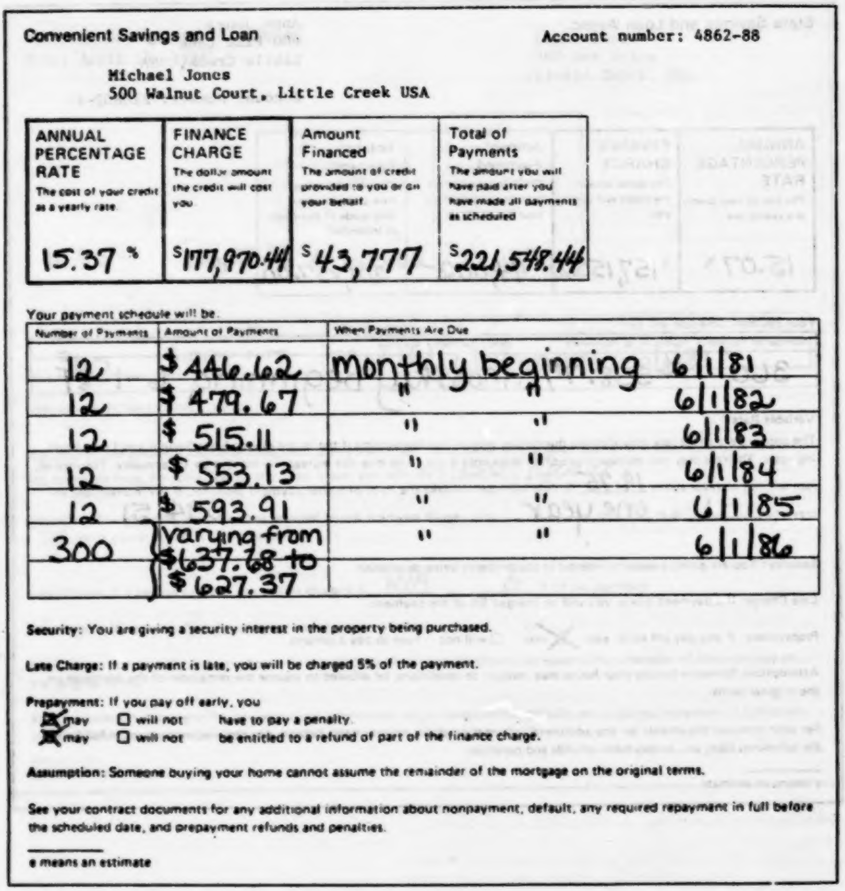
Prepayment: If you pay off early, you ☒ may ☐ will not have to pay a penalty.

Assumption: Someone buying your house may, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

e means an estimate

H-15—Graduated Payment Mortgage Sample



Convenient Savings and Loan

Account number: 4862-88

Michael Jones
500 Walnut Court, Little Creek USA

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost you.	**Amount Financed** The amount of credit provided to you or on your behalf.	**Total of Payments** The amount you will have paid after you have made all payments as scheduled.
15.37 %	$177,970.44	$43,777	$221,548.44

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
12	$446.62	monthly beginning 6/1/81
12	$479.67	" " 6/1/82
12	$515.11	" " 6/1/83
12	$553.13	" " 6/1/84
12	$593.91	" " 6/1/85
300	varying from $637.68 to $627.37	" " 6/1/86

Security: You are giving a security interest in the property being purchased.

Late Charge: If a payment is late, you will be charged 5% of the payment.

Prepayment: If you pay off early, you
☒ may ☐ will not have to pay a penalty.
☒ may ☐ will not be entitled to a refund of part of the finance charge.

Assumption: Someone buying your home cannot assume the remainder of the mortgage on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

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e means an estimate

[46 FR 20892, Apr. 7, 1981, as amended at 46 FR 29246, June 1, 1981]

APPENDIX I—FEDERAL ENFORCEMENT AGENCIES

The following list indicates which Federal agency enforces Regulation Z for particular classes of businesses. Any questions concerning compliance by a particular business should be directed to the appropriate enforcement agency.

National Banks

Office of Customer and Community Programs, Comptroller of the Currency, Washington, D.C. 20219.

State Member Banks

Federal Reserve Bank serving the district in which the State member bank is located.

Nonmember Insured Banks

Federal Deposit Insurance Corporation Regional director for the region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (Except for Savings Banks Insured by FDIC)

The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions

Regional office of the National Credit Union Administration serving the area in which the Federal credit union is located.

Air Carriers

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations

Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, D.C. 20578.

Retail, Department Stores, Consumer Finance Companies, All Other Creditors, and All Nonbank Credit Card Issuers

(Creditors operating on a local or regional basis should use the address of the FTC Regional Office in which they operate.)

Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

[46 FR 20892, Apr. 7, 1981, as amended at 50 FR 8708, Mar. 5, 1985]

APPENDIX J—ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CLOSED-END CREDIT TRANSACTIONS

(a) *Introduction.* (1) Section 226.22(a) of Regulation Z provides that the annual percentage rate for other than open end credit transactions shall be determined in accordance with either the actuarial method or the United States Rule method. This appendix contains an explanation of the actuarial method as well as equations, instructions and examples of how this method applies to single advance and multiple advance transactions.

(2) Under the actuarial method, at the end of each unit-period (or fractional unit-period) the unpaid balance of the amount financed is increased by the finance charge earned during that period and is decreased by the total payment (if any) made at the end of that period. The determination of unit-periods and fractional unit-periods shall be consistent with the definitions and rules in paragraphs (b) (3), (4) and (5) of this section and the general equation in paragraph (b)(8) of this section.

(3) In contrast, under the United States Rule method, at the end of each payment period, the unpaid balance of the amount financed is increased by the finance charge earned during that payment period and is decreased by the payment made at the end of that payment period. If the payment is less than the finance charge earned, the adjustment of the unpaid balance of the amount financed is postponed until the end of the next payment period. If at that time the sum of the two payments is still less than the total earned finance charge for the two payment periods, the adjustment of the unpaid balance of the amount financed is postponed still another payment period, and so forth.

(b) *Instructions and equations for the actuarial method*—(1) *General rule.* The annual percentage rate shall be the nominal annual percentage rate determined by multiplying the unit-period rate by the number of unit-periods in a year.

(2) *Term of the transaction.* The term of the transaction begins on the date of its consummation, except that if the finance charge or any portion of it is earned beginning on a later date, the term begins on the later date. The term ends on the date the last payment is due, except that if an advance is scheduled after that date, the term ends on the later date. For computation purposes, the length of the term shall be equal to the time interval between any point in time on the beginning date to the same point in time on the ending date.

(3) *Definitions of time intervals.* (i) A period is the interval of time between advances or between payments and includes the interval of time between the date the finance charge begins to be earned and the date of the first advance thereafter or the date of the first payment thereafter, as applicable.

(ii) A common period is any period that occurs more than once in a transaction.

(iii) A standard interval of time is a day, week, semimonth, month, or a multiple of a week or a month up to, but not exceeding, 1 year.

(iv) All months shall be considered equal. Full months shall be measured from any point in time on a given date of a given month to the same point in time on the same date of another month. If a series of payments (or advances) is scheduled for the last day of each month, months shall be measured from the last day of the given month to the last day of another month. If payments (or advances) are scheduled for the 29th or 30th of each month, the last day of February shall be used when applicable.

(4) *Unit-period.* (i) In all transactions other than a single advance, single payment transaction, the unit-period shall be that common period, not to exceed 1 year, that occurs most frequently in the transaction, except that

(A) If 2 or more common periods occur with equal frequency, the smaller of such common periods shall be the unit-period; or

(B) If there is no common period in the transaction, the unit-period shall be that period which is the average of all periods rounded to the nearest whole standard interval of time. If the average is equally near 2 standard intervals of time, the lower shall be the unit-period.

(ii) In a single advance, single payment transaction, the unit-period shall be the term of the transaction, but shall not exceed 1 year.

(5) *Number of unit-periods between 2 given dates.* (i) The number of days between 2 dates shall be the number of 24-hour intervals between any point in time on the first date to the same point in time on the second date.

(ii) If the unit-period is a month, the number of full unit-periods between 2 dates shall be the number of months measured back from the later date. The remaining fraction of a unit-period shall be the number of days measured forward from the earlier date to the beginning of the first full unit-period, divided by 30. If the unit-period is a month, there are 12 unit-periods per year.

(iii) If the unit-period is a semimonth or a multiple of a month not exceeding 11 months, the number of days between 2 dates shall be 30 times the number of full months measured back from the later date, plus the number of remaining days. The number of full unit-periods and the remaining fraction of a unit-period shall be determined by dividing such number of days by 15 in the case of a semimonthly unit-period or by the appropriate multiple of 30 in the case of a multimonthly unit-period. If the unit-period is a semimonth, the number of unit-periods per year shall be 24. If the number of unit-periods is a multiple of a month, the number of unit-periods per year shall be 12 divided by the number of months per unit-period.

(iv) If the unit-period is a day, a week, or a multiple of a week, the number of full unit-periods and the remaining fractions of a unit-period shall be determined by dividing the number of days between the 2 given dates by the number of days per unit-period. If the unit-period is a day, the number of unit-periods per year shall be 365. If the unit-period is a week or a multiple of a week, the number of unit-periods per year shall be 52 divided by the number of weeks per unit-period.

(v) If the unit-period is a year, the number of full unit-periods between 2 dates shall be the number of full years (each equal to 12 months) measured back from the later date. The remaining fraction of a unit-period shall be

(A) The remaining number of months divided by 12 if the remaining interval is equal to a whole number of months, or

(B) The remaining number of days divided by 365 if the remaining interval is *not* equal to a whole number of months.

(vi) In a single advance, single payment transaction in which the term is less than a year and is equal to a whole number of months, the number of unit-periods in the term shall be 1, and the number of unit-periods per year shall be 12 divided by the number of months in the term or 365 divided by the number of days in the term.

(vii) In a single advance, single payment transaction in which the term is less than a year and is *not* equal to a whole number of months, the number of unit-periods in the term shall be 1, and the number of unit-periods per year shall be 365 divided by the number of days in the term.

(6) *Percentage rate for a fraction of a unit-period.* The percentage rate of finance charge for a fraction (less than 1) of a unit-period shall be equal to such fraction multiplied by the percentage rate of finance charge per unit-period.

(7) Symbols. The symbols used to express the terms of a transaction in the equation set forth in paragraph (b)(8) of this section are defined as follows:

A_k = The amount of the kth advance.

q_k = The number of full unit-periods from the beginning of the term of the transaction to the kth advance.

e_k = The fraction of a unit-period in the time interval from the beginning of the term of the transaction to the kth advance.

m = The number of advances.

P_j = The amount of the jth payment.

t_j = The number of full unit-periods from the beginning of the term of the transaction to the jth payment.

f_j = The fraction of a unit-period in the time interval from the beginning of the term of the transaction to the jth payment.

n = The number of payments.

i = The percentage rate of finance charge per unit-period, expressed as a decimal equivalent.

Symbols used in the examples shown in this appendix are defined as follows:

$\ddot{a}_{\overline{x|}}$ = The present value of 1 per unit-period for x unit-periods, first payment due immediately.

$$= 1 + \frac{1}{(1+i)} + \frac{1}{(1+i)^2} + \cdots + \frac{1}{(1+i)^{x-1}}$$

w = The number of unit-periods per year.

I = wi x 100 = The nominal annual percentage rate.

(8) General equation. The following equation sets forth the relationship among the terms of a transaction:

$$\frac{A_1}{(1+e_1 i)(1+i)^{q_1}} + \frac{A_2}{(1+e_2 i)(1+i)^{q_2}} + \ldots + \frac{A_m}{(1+e_m i)(1+i)^{q_m}} =$$

$$\frac{P_1}{(1+f_1 i)(1+i)^{t_1}} + \frac{P_2}{(1+f_2 i)(1+i)^{t_2}} + \ldots + \frac{P_n}{(1+f_n i)(1+i)^{t_n}}$$

(9) Solution of general equation by iteration process. (i) The general equation in paragraph (b)(8) of this section, when applied to a simple transaction in which a loan of $1000 is repaid by 36 monthly payments of $33.61 each, takes the special form:

$$A = \frac{33.61\ \ddot{a}_{\overline{36}|}}{(1+i)}$$

Step 1: Let I_1 = estimated annual percentage rate = 12.50 %

Evaluate expression for A, letting $i = I_1/(100w)$ = .010416667

Result (referred to as A') = 1004.674391

Step 2: Let $I_2 = I_1 + .1$ = 12.60 %

Evaluate expression for A, letting $i = I_2/(100w)$ = .010500000

Result (referred to as A'') = 1003.235366

Step 3: Interpolate for I (annual percentage rate):

$$I = I_1 + .1\left[\frac{(A - A')}{(A'' - A')}\right]$$

$$= 12.50 + .1\left[\frac{(1000.000000 - 1004.674391)}{(1003.235366 - 1004.674391)}\right] = 12.82483042\ \%$$

Step 4: First iteration, let I_1 = 12.82483042 % and repeat

Steps 1, 2, and 3 obtaining a new I = 12.82557859 %

Second iteration, let I_1 = 12.82557859 % and repeat

Steps 1, 2, and 3 obtaining a new I = 12.82557529 %

In this case, no further iterations are required to obtain the annual percentage rate correct to two decimal places, 12.83%.

(ii) When the iteration approach is used, it is expected that calculators or computers will be programmed to carry all available decimals throughout the calculation and that enough iterations will be performed to make virtually certain that the annual percentage rate obtained, when rounded to 2 decimals, is correct. Annual percentage rates in the examples below were obtained by using a 10 digit programmable calculator and the iteration procedure described above.

(c) Examples for the actuarial method. (1) Single advance transaction, with or without an odd first period, and otherwise regular. The general equation in paragraph (b)(8) of this section can be put in the following special form for this type of transaction:

$$A = \frac{1}{(1+fi)(1+i)^{t}}\left(P\,\ddot{a}_{\overline{n}|}\right)$$

Example (i): Monthly payments (regular first period)

Amount advanced (A) = \$5000. Payment (P) = \$230.
Number of payments (n) = 24.
Unit-period = 1 month. Unit-periods per year (w) = 12.
Advance, 1-10-78. First payment, 2-10-78.
From 1-10-78 through 2-10-78 = 1 unit-period. (t = 1; f = 0)
Annual percentage rate (I) = wi = .0969 = 9.69 %

Example (ii): Monthly payments (long first period)

Amount advanced (A) = \$6000. Payment (P) = \$200.
Number of payments (n) = 36.
Unit-period = 1 month. Unit-periods per year (w) = 12.
Advance, 2-10-78. First payment, 4-1-78.
From 3-1-78 through 4-1-78 = 1 unit-period. (t = 1)
From 2-10-78 through 3-1-78 = 19 days. (f = 19/30)
Annual percentage rate (I) = wi = .1182 = 11.82%

Example (iii): Semimonthly payments (short first period)

Amount advanced (A) = \$5000. Payment (P) = \$219.17.
Number of payments (n) = 24.
Unit-period = 1/2 month. Unit-periods per year (w) = 24.
Advance, 2-23-78. First payment, 3-1-78. Payments made on 1st and 16th of each month.
From 2-23-78 through 3-1-78 = 6 days. (t = 0; f = 6/15)
Annual percentage rate (I) = wi = .1034 = 10.34 %

Example (iv): Quarterly payments (long first period)

Amount advanced (A) = \$10,000. Payment (P) = \$385.
Number of payments (n) = 40.
Unit-period = 3 months. Unit-periods per year (w) = 4.
Advance, 5-23-78. First payment, 10-1-78.
From 7-1-78 through 10-1-78 = 1 unit-period. (t = 1)
From 6-1-78 through 7-1-78 = 1 month = 30 days. From 5-23-78 through 6-1-78 = 9 days. (f = 39/90)
Annual percentage rate (I) = wi = .0897 = 8.97 %

Example (v): Weekly payments (long first period)

Amount advanced (A) = \$500. Payment (P) = \$17.60.
Number of payments (n) = 30.
Unit-period = 1 week. Unit-periods per year (w) = 52.
Advance, 3-20-78. First payment, 4-21-78.
From 3-24-78 through 4-21-78 = 4 unit-periods. ($t = 4$)
From 3-20-78 through 3-24-78 = 4 days. ($f = 4/7$)
Annual percentage rate (I) = wi = .1496 = 14.96 %

(2) Single advance transaction, with an odd first payment, with or without an odd first period, and otherwise regular. The general equation in paragraph (b)(8) of this section can be put in the following special form for this type of transaction:

$$A = \frac{1}{(1+fi)(1+i)^{t}} \left[P_1 + \frac{P \ddot{a}_{\overline{n-1}|}}{(1+i)} \right]$$

Example (i): Monthly payments (regular first period and irregular first payment)

Amount advanced (A) = \$5000. First payment (P_1) = \$250.
Regular payment (P) = \$230. Number of payments (n) = 24.
Unit-period = 1 month. Unit-periods per year (w) = 12.
Advance, 1-10-78. First payment, 2-10-78.
From 1-10-78 through 2-10-78 = 1 unit-period. ($t = 1$; $f = 0$)
Annual percentage rate (I) = wi = .1008 = 10.08%

Example (ii): Payments every 4 weeks (long first period and irregular first payment)

Amount advanced (A) = \$400. First payment (P_1) = \$39.50.
Regular payment (P) = \$38.31. Number of payments (n) = 12.
Unit-period = 4 weeks. Unit-periods per year (w) = 52/4 = 13.
Advance, 3-18-78. First payment, 4-20-78.
From 3-23-78 through 4-20-78 = 1 unit-period. ($t = 1$)
From 3-18-78 through 3-23-78 = 5 days. ($f = 5/28$)
Annual percentage rate (I) = wi = .2850 = 28.50%

(3) Single advance transaction, with an odd final payment, with or without an odd first period, and otherwise regular. The general equation in paragraph (b)(8) of this section can be put in the following special form for this type of transaction:

$$A = \frac{1}{(1+fi)(1+i)^{t}} \left[P \ddot{a}_{\overline{n-1}|} + \frac{P_n}{(1+i)^{n-1}} \right]$$

Example (i): Monthly payments (regular first period and irregular final payment)

Amount advanced (A) = \$5000. Regular payment (P) = \$230.
Final payment $\left(P_n\right)$ = \$280. Number of payments (n) = 24.
Unit-period = 1 month. Unit-periods per year (w) = 12.
Advance, 1-10-78. First payment, 2-10-78.
From 1-10-78 through 2-10-78 = 1 unit-period. (t = 1; f = 0)
Annual percentage rate (I) = wi = .1050 = 10.50%

Example (ii): Payments every 2 weeks (short first period and irregular final payment)

Amount advanced (A) = \$200. Regular payment (P) = \$9.50.
Final payment $\left(P_n\right)$ = \$30. Number of payments (n) = 20.
Unit-period = 2 weeks. Unit-periods per year (w) = 52/2 = 26.
Advance, 4-3-78. First payment, 4-11-78.
From 4-3-78 through 4-11-78 = 8 days. (t = 0; f = 8/14)
Annual percentage rate (I) = wi = .1222 = 12.22%

(4) Single advance transaction, with an odd first payment, odd final payment, with or without an odd first period, and otherwise regular. The general equation in paragraph (b)(8) of this section can be put in the following special form for this type of transaction:

$$A = \frac{1}{(1+fi)(1+i)^{t}}\left[P_1 + \frac{P\ddot{a}_{\overline{n-2}|}}{(1+i)} + \frac{P_n}{(1+i)^{n-1}}\right]$$

Example (i): Monthly payments (regular first period, irregular first payment, and irregular final payment)

Amount advanced (A) = \$5000. First payment $\left(P_1\right)$ = \$250.
Regular payment (P) = \$230. Final payment $\left(P_n\right)$ = \$280.
Number of payments (n) = 24. Unit-period = 1 month.
Unit-periods per year (w) = 12.
Advance, 1-10-78. First payment, 2-10-78.
From 1-10-78 through 2-10-78 = 1 unit-period. (t = 1; f = 0)
Annual percentage rate (I) = wi = .1090 = 10.90%

Example (ii): Payments every two months (short first period, irregular first payment, and irregular final payment)

Amount advanced (A) = \$8000. First payment $\left(P_1\right)$ = \$449.36.
Regular payment (P) = \$465. Final payment $\left(P_n\right)$ = \$200.
Number of payments (n) = 20. Unit-period = 2 months.
Unit-periods per year (w) = 12/2 = 6.
Advance, 1-10-78. First payment, 3-1-78.
From 2-1-78 through 3-1-78 = 1 month. From 1-10-78 through 2-1-78 = 22 days. (t = 0; f = 52/60)
Annual percentage rate (I) = wi = .0730 = 7.30%

(5) Single advance, single payment transaction. The general equation in paragraph (b)(8) of this section can be put in the special forms below for single advance, single payment transactions. Forms 1 through 3 are for the direct determination of the annual percentage rate under special conditions. Form 4 requires the use of the iteration procedure of paragraph (b)(9) of this section and can be used for all single advance, single payment transactions regardless of term.

Form 1 - Term less than 1 year:

$$I = 100w\left(\frac{P}{A} - 1\right)$$

Form 2 - Term more than 1 year but less than 2 years:

$$I = \frac{50}{f}\left\{\left[(1 + f)^2 + 4f\left(\frac{P}{A} - 1\right)\right]^{1/2} - (1 + f)\right\}$$

Form 3 - Term equal to exactly a year or exact multiple of a year:

$$I = 100\left[\left(\frac{P}{A}\right)^{1/t} - 1\right]$$

Form 4 - Special form for iteration procedure (no restriction on term):

$$A = \frac{P}{(1 + fi)(1 + i)^t}$$

Example (i): Single advance, single payment (term of less than 1 year, measured in days)

Amount advanced (A) = \$1000. Payment (P) = \$1080.
Unit-period = 255 days. Unit-periods per year (w) = 365/255.
Advance, 1-3-78. Payment, 9-15-78.
From 1-3-78 through 9-15-78 = 255 days. (t = 1; f = 0)
Annual percentage rate (I) = wi = .1145 = 11.45%. (Use Form 1 or 4.)

Example (ii): Single advance, single payment (term of less than 1 year, measured in exact calendar months)

Amount advanced (A) = \$1000. Payment (P) = \$1044.
Unit-period = 6 months. Unit-periods per year (w) = 2.
Advance, 7-15-78. Payment, 1-15-79.
From 7-15-78 through 1-15-79 = 6 mos. (t = 1; f = 0)
Annual percentage rate (I) = wi = .0880 = 8.80%. (Use Form 1 or 4.)

Example (iii): Single advance, single payment (term of more than 1 year but less than 2 years, fraction measured in exact months)

Amount advanced (A) = \$1000. Payment (P) = \$1135.19.
Unit-period = 1 year. Unit-periods per year (w) = 1.
Advance, 7-17-78. Payment, 1-17-80.
From 1-17-79 through 1-17-80 = 1 unit-period. (t = 1)
From 7-17-78 through 1-17-79 = 6 mos. (f = 6/12)
Annual percentage rate (I) = wi = .0876 = 8.76%. (Use Form 2 or 4.)

Example (iv): Single advance, single payment (term of exactly 2 years)

Amount advanced (A) = \$1000. Payment (P) = \$1240.
Unit-period = 1 year. Unit-periods per year (w) = 1.
Advance, 1-3-78. Payment, 1-3-80.
From 1-3-78 through 1-3-79 = 1 unit-period. (t = 2; f = 0)
Annual percentage rate (I) = wi = .1136 = 11.36%. (Use Form 3 or 4.)

(6) Complex single advance transaction.

Example (i): Skipped payment loan (payments every 4 weeks)

A loan of \$2135 is advanced on 1-25-78. It is to be repaid by 24 payments of \$100 each. Payments are due every 4 weeks beginning 2-20-78. However, in those months in which 2 payments would be due, only the first of the 2 payments is made and the following payment is delayed by 2 weeks to place it in the next month.
Unit-period = 4 weeks. Unit-periods per year (w) = 52/4 = 13.
First series of payments begins 26 days after 1-25-78.
($t_1 = 0$; $f_1 = 26/28$)

Second series of payments begins 9 unit-periods plus 2 weeks after start of first series. ($t_2 = 10$; $f_2 = 12/28$)

Third series of payments begins 6 unit-periods plus 2 weeks after start of second series. ($t_3 = 16$; $f_3 = 26/28$)

Last series of payments begins 6 unit-periods plus 2 weeks after start of third series. ($t_4 = 23$; $f_4 = 12/28$)

The general equation in paragraph (b)(8) of this section can be written in the special form:

$$2135 = \frac{100\,\ddot{a}_{\overline{9|}}}{(1+(26/28)i)} + \frac{100\,\ddot{a}_{\overline{6|}}}{(1+(12/28)i)(1+i)^{10}} + \frac{100\,\ddot{a}_{\overline{6|}}}{(1+(26/28)i)(1+i)^{16}} + \frac{100\,\ddot{a}_{\overline{3|}}}{(1+(12/28)i)(1+i)^{23}}$$

Annual percentage rate (I) = wi = .1200 = 12.00%

Example (ii): Skipped payment loan plus single payments

A loan of $7350 on 3-3-78 is to be repaid by 3 monthly payments of $1000 each beginning 9-15-78, plus a single payment of $2000 on 3-15-79, plus 3 more monthly payments of $750 each beginning 9-15-79, plus a final payment of $1000 on 2-1-80.
Unit-period = 1 month. Unit-periods per year (w) = 12.
First series of payments begins 6 unit-periods plus 12 days after 3-3-78. ($t_1 = 6$; $f_1 = 12/30$)

Second series of payments (single payment) occurs 12 unit-periods plus 12 days after 3-3-78. ($t_2 = 12$; $f_2 = 12/30$)

Third series of payments begins 18 unit-periods plus 12 days after 3-3-78. ($t_3 = 18$; $f_3 = 12/30$)

Final payment occurs 22 unit-periods plus 29 days after 3-3-78. ($t_4 = 22$; $f_4 = 29/30$)

The general equation in paragraph (b)(8) of this section can be written in the special form:

$$7350 = \frac{1000\,\ddot{a}_{\overline{3}|}}{(1+(12/30)i)(1+i)^{6}} + \frac{2000}{(1+(12/30)i)(1+i)^{12}} + \frac{750\,\ddot{a}_{\overline{3}|}}{(1+(12/30)i)(1+i)^{18}} + \frac{1000}{(1+(29/30)i)(1+i)^{22}}$$

Annual percentage rate (I) = wi = .1022 = 10.22%

Example (iii): Mortgage with varying payments

A loan of $39,688.56 (net) on 4-10-78 is to be repaid by 360 monthly payments beginning 6-1-78. Payments are the same for 12 months at a time as follows:

Year	Monthly payment	Year	Monthly payment	Year	Monthly payment
1	$291.81	11	$385.76	21	$380.43
2	300.18	12	385.42	22	379.60
3	308.78	13	385.03	23	378.68
4	317.61	14	384.62	24	377.69
5	326.65	15	384.17	25	376.60
6	335.92	16	383.67	26	375.42
7	345.42	17	383.13	27	374.13
8	355.15	18	382.54	28	372.72
9	365.12	19	381.90	29	371.18
10	375.33	20	381.20	30	369.50

Unit-period = 1 month. Unit-periods per year (w) = 12.
From 5-1-78 through 6-1-78 = 1 unit-period. (t = 1)
From 4-10-78 through 5-1-78 = 21 days. (f = 21/30)

The general equation in paragraph (b)(8) of this section can be written in the special form:

$$39{,}688.56 = \frac{\ddot{a}_{\overline{12}|}}{(1+(21/30)i)(1+i)} \left[291.81 + \frac{300.18}{(1+i)^{12}} + \frac{308.78}{(1+i)^{24}} + \cdots + \frac{369.50}{(1+i)^{348}} \right]$$

Annual percentage rate (I) = wi = .0980 = 9.80%

(7) Multiple advance transactions.

Example (i): Construction loan

Three advances of $20,000 each are made on 4-10-79, 6-12-79, and 9-18-79. Repayment is by 240 monthly payments of $612.36 each beginning 12-10-79.
Unit-period = 1 month. Unit-periods per year (w) = 12.
From 4-10-79 through 6-12-79 = (2+2/30) unit-periods.
From 4-10-79 through 9-18-79 = (5+8/30) unit-periods.
From 4-10-79 through 12-10-79 = (8) unit-periods.

The general equation in paragraph (b)(8) of this section is changed to the single advance mode by treating the 2nd and 3rd advances as negative payments:

$$20{,}000 = \frac{612.36\,\ddot{a}_{\overline{240|}}}{(1+i)^{8}} - \frac{20{,}000}{(1+(2/30)i)(1+i)^{2}} - \frac{20{,}000}{(1+(8/30)i)(1+i)^{5}}$$

Annual percentage rate (I) = wi = .1025 = 10.25%

Example (ii): Student loan

A student loan consists of 8 advances: $1800 on 9-5-78, 9-5-79, 9-5-80, and 9-5-81; plus $1000 on 1-5-79, 1-5-80, 1-5-81, and 1-5-82. The borrower is to make 50 monthly payments of $240 each beginning 7-1-78 (prior to first advance).
Unit-period = 1 month. Unit-periods per year (w) = 12.
Zero point is date of first payment since it precedes first advance.
From 7-1-78 to 9-5-78 = (2 + 4/30) unit-periods.
" " " 9-5-79 = (14 + 4/30) "
" " " 9-5-80 = (26 + 4/30) "
" " " 9-5-81 = (38 + 4/30) "
" " " 1-5-79 = (6 + 4/30) "
" " " 1-5-80 = (18 + 4/30) "
" " " 1-5-81 = (30 + 4/30) "
" " " 1-5-82 = (42 + 4/30) "

Since the zero point is date of first payment, the general equation in paragraph (b)(8) of this section is written in the single advance form below by treating the first payment as a negative advance and the 8 advances as negative payments:

$$-240 = \frac{240\,\ddot{a}_{\overline{49|}}}{(1+i)} - \frac{1800}{(1+(4/30)i)}\left[\frac{1}{(1+i)^{2}} + \frac{1}{(1+i)^{14}} + \frac{1}{(1+i)^{26}} + \frac{1}{(1+i)^{38}}\right]$$

$$- \frac{1000}{(1+(4/30)i)}\left[\frac{1}{(1+i)^{6}} + \frac{1}{(1+i)^{18}} + \frac{1}{(1+i)^{30}} + \frac{1}{(1+i)^{42}}\right]$$

Annual percentage rate (I) = wi = .3204 = 32.04%

[46 FR 20892, Apr. 7, 1981, as amended at 46 FR 29246, June 1, 1981]

SUPPLEMENT I—OFFICIAL STAFF INTERPRETATIONS

INTRODUCTION

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation Z, as revised effective April 1, 1981. Good faith compliance with this commentary affords protection from liability under 130(f) of the Truth in Lending Act. Section 130(f) (15 U.S.C. 1640) protects creditors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedure for requesting interpretations.* Under Appendix C of the regulation, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the FEDERAL REGISTER. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Status of previous interpretations.* All statements and opinions issued by the Federal Reserve Board and its staff interpreting previous Regulation Z remain effective until October 1, 1982, only insofar as they interpret that regulation. When compliance with revised Regulation Z becomes mandatory on October 1, 1982, the Board and staff interpretations of the previous regulation will be entirely superseded by the revised regulation and this commentary except with regard to liability under the previous regulation.

4. *Rules of construction.* (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as "including, but not limited to," "among other things," "for example," or "such as."

(b) Throughout the commentary and regulation, reference to the regulation should be construed to refer to revised Regulation Z, unless the context indicates that a reference to previous Regulation Z is also intended.

(c) Throughout the commentary, reference to "this section" or "this paragraph" means the section or paragraph in the regulation that is the subject of the comment.

5. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph which it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 226.18(b) are further divided by paragraph, such as Comment 18(b)(1)-1 and Comment 18(b)(2)-1. In other cases, comments have more general application and are designated, for example, as Comment 18-1 or Comment 18(b)-1. This introduction may be cited as Comments I-1 through I-7. The appendices may be cited as Comments App. A-1 through App. J-2.

6. *Cross-references.* The following cross-references to related material appear at the end of each section of the commentary: (a) "Statute"—those sections of the Truth in Lending Act on which the regulatory provision is based (and any other relevant statutes); (b) "Other sections"—other provisions in the regulation necessary to understand that section; (c) "Previous regulation"—parallel provisions in previous Regulation Z; and (d) "1981 changes"—a brief description of the major changes made by the 1981 revisions to Regulation Z. Where appropriate a fifth category ("Other regulations") provides cross-references to other regulations.

7. *Transition rules.* (a) Though compliance with the revised regulation is not mandatory until April 1, 1982, creditors may begin complying as of April 1, 1981. During the intervening year, a creditor may convert its entire operation to the new requirements at one time, or it may convert to the new requirements in stages. In general, however, a creditor may not mix the regulatory requirements when making disclosures for a particular closed-end transaction or open-end account; all the disclosures for a single closed-end transaction (or open-end account) must be made in accordance with the previous regulation, or all the disclosures must be made in accordance with the revised regulation. As an exception to the general rule, the revised rescission rules and the revised advertising rules may be followed even if the disclosures are based on the previous regulation. For purposes of this regulation, the creditor is not required to take any particular action beyond the requirements of the revised regulation to indicate its conversion to the revised regulation.

(b) The revised regulation may be relied on to determine if any disclosures are required for a particular transaction or to determine if a person is a "creditor" subject to Truth in Lending requirements, whether or not other operations have been converted to the revised regulation. For example, layaway plans are not subject to the revised regulation, nor are oral agreements to lend money if there is no finance charge. These provisions may be relied on even if the creditor is making other disclosures under the previous regulation. The new rules governing whether or not disclosures must be made for refinancings and assumptions are also available to a creditor that has not yet converted its operations to the revised regulation.

(c) In addition to the above rules, applicable to both open-end and closed-end credit, the following guidelines are relevant to open-end credit:

- The creditor need not remake initial disclosures that were made under the previous regulation, even if the revised periodic statements contain terminology that is inconsistent with those initial disclosures.
- A creditor may add inserts to its old open-end forms in order to convert them to the revised rules until such time as the old forms are used up.
- No change-in-terms notice is required for changes resulting from the conversion to the revised regulation.
- The previous billing rights statements are substantially similar to the revised billing rights statements and may continue to be used, except that, if the creditor has an automatic debit program, it must use the revised automatic debit provision.
- For those creditors wishing to use the annual billing rights statement, the creditor may count from the date on which it sent its last statement under the previous regulation in determining when to give the first statement under the new regulation. For example, if the creditor sent a semi-annual statement in June 1981, and converts to the new regulation in October 1981, the creditor must give the billing rights statement sometime in 1982, and it must not be fewer than 6 nor more than 18 months after the June statement.
- Section 226.11 of the revised regulation affects only credit balances that are created on or after the date the creditor converts the account to the revised regulation.

SUBPART A—GENERAL

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

1(c) Coverage.

1. *Foreign applicability.* Regulation Z applies to all persons (including branches of foreign banks and sellers located in the United States) that extend consumer credit to residents (including resident aliens) of any state as defined in § 226.2. If an account is located in the United States and credit is extended to a U.S. resident, the transaction is subject to the regulation. This will be the case whether or not a particular advance or purchase on the account takes place in the United States and whether or not the extender of credit is chartered or based in the United States or a foreign country. Thus, a U.S. resident's use in Europe of a credit card issued by a bank in the consumer's home town is covered by the regulation. The regulation does not apply to a foreign branch of a U.S. bank when the foreign branch extends credit to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

References

Statute: Section 102.

Other sections: None.

Previous regulation: § 226.1.

1981 changes: A discussion of coverage has been added to § 226.1 so that the reader will understand from the start what is subject to the regulation. Language has also been added to explain the reorganization of the regulation into subparts that group together the provisions relating to general matters, open-end credit, closed-end credit, and miscellaneous rules. The provisions on consumer leasing have been issued by the Board as a separate regulation, Regulation M (12 CFR Part 213).

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

2(a)(2) "Advertisement".

1. *Coverage.* Only commercial messages that promote consumer credit transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of credit transactions, whether in visual, oral, or print media, are covered by the regulation. Examples include:

- Messages in a newspaper, magazine, leaflet, promotional flyer, or catalog.
- Announcements on radio, television, or public address system.
- Direct mail literature or other printed material on any exterior or interior sign.
- Point-of-sale displays.
- Telephone solicitations.
- Price tags that contain credit information.
- Letters sent to customers as part of an organized solicitaion of business.
- Messages on checking account statements offering auto loans at a stated annual percentage rate.

The term does *not* include:

- Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, or oral or written communication relating to the negotiation of a specific transaction.
- Informational material, for example, interest rate and loan term memos, distributed only to business entities.
- Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.

- News articles the use of which is controlled by the news medium.
- Market research or educational material that do not solicit business.

2. *Persons covered.* All "persons" must comply with the advertising provisions in §§ 226.16 and 226.24, not just those that meet the definition of creditor in § 226.2(a)(17). Thus, home builders, merchants, and others who are not themselves creditors must comply with the advertising provisions of the regulation if they advertise consumer credit transactions. However, under section 145 of the act, the owner and the personnel of the medium, in which an advertisement appears, or through which it is disseminated, are not subject to civil liability for violations.

2(a)(3) [Reserved]

2(a)(4) "Billing cycle" or "cycle".

1. *Intervals.* In open-end credit plans, the billing cycle determines the intervals for which periodic disclosure statements are required; these intervals are also used as measuring points for other duties of the creditor. Typically, billing cycles are monthly, but they may be more frequent or less frequent (but not less frequent than quarterly).

2. *Creditors that do not bill.* The term "cycle" is interchangeable with "billing cycle" for definitional purposes, since some creditors' cycles do not involve the sending of bills in the traditional sense but only statements of account activity. This is commonly the case with financial institutions when periodic payments are made through payroll deduction or through automatic debit of the consumer's asset account.

3. *Equal cycles.* Although cycles must be equal, there is a permissible variance to account for weekends, holidays, and differences in the number of days in months. If the actual date of each statement does not vary by more than 4 days from a fixed "day" (for example, the third Thursday of each month) or "date" (for example, the 15th of each month) that the creditor regularly uses, the intervals between statements are considered equal. The requirement that cycles be equal applies even if the creditor applies a daily periodic rate to determine the finance charge. The requirement that intervals be equal does not apply to the transitional billing cycle that can occur when the creditor occasionally changes its billing cycles so as to establish a new statement day or date. (See the commentary to § 226.9(c).)

4. *Payment reminder.* The sending of a regular payment reminder (rather than a late payment notice) establishes a cycle for which the creditor must send periodic statements.

2(a)(6) "Business day".

1. *Business function test.* Activities that indicate that the creditor is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle credit transaction inquiries. Activities that indicate that the creditor is not open for substantially all of its business functions include a retailer merely accepting credit cards for purchases or a bank having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

2. *Rescission rule.* A more precise rule for what is a business day (all calendar days except Sundays and the federal legal holidays listed in 5 U.S.C. 6103(a)) applies when the right of rescission is involved.

2(a)(7) "Card issuer".

1. *Agent.* An agent of a card issuer is considered a card issuer. Because agency relationships are traditionally defined by contract and by state or other applicable law, the regulation does not define agent. Merely providing services relating to the production of credit cards or data processing for others, however, does not make one the agent of the card issuer. In contrast, a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

2(a)(8) "Cardholder".

1. *General rule.* A cardholder is a natural person at whose request a card is issued for consumer credit purposes or who is a co-obligor or guarantor for such a card issued to another. The second category does not include an employee who is a co-obligor or guarantor on a card issued to the employer for business purposes, nor does it include a person who is merely the authorized user of a card issued to another.

2. *Limited application of regulation.* For the limited purposes of the rules on issuance of credit cards and liability for unauthorized use, a cardholder includes *any* person, including an organization, to whom a card is issued for *any* purpose—including a business, agricultural, or commercial purpose.

3. *Issuance.* See the commentary to § 226.12(a).

4. *Dual-purpose cards and dual-card systems.* Some card issuers offer dual-purpose cards that are for business as well as consumer purposes. If a card is issued to an individual for consumer purposes, the fact that an organization has guaranteed to pay the debt does not make it business credit. On the other hand, if a card is issued for business purposes, the fact that an individual sometimes uses it for consumer purchases does not subject the card issuer to the provisions on periodic statements, bill-

ing error resolution, and other protections afforded to consumer credit. Some card issuers offer dual-card systems—that is, they issue two cards to the same individual, one intended for business use, the other for consumer or personal use. With such a system, the same person may be a cardholder for general purposes when using the card issued for consumer use, and a cardholder only for the limited purposes of the restrictions on issuance and liability when using the card issued for business purposes.

2(a)(9) *"Cash price"*.

1. *Components.* This amount is a starting point in computing the amount financed and the total sale price under § 226.18 for credit sales. Any charges imposed equally in cash and credit transactions may be included in the cash price, or they may be treated as other amounts financed under § 226.18(b)(2).

2. *Service contracts.* Service contracts include contracts for the repair or the servicing of goods, such as mechanical breakdown coverage, even if such a contract is characterized as insurance under state law.

3. *Rebates.* The creditor has complete flexibility in the way it treats rebates for purposes of disclosure and calculation. See the commentary to § 226.18(b).

2(a)(10) *"Closed-end credit"*.

1. *General.* The coverage of this term is defined by exclusion. That is, it includes any credit arrangement that does not fall within the definition of open-end credit. Subpart C contains the disclosure rules for closed-end credit when the obligation is subject to a finance charge or is payable by written agreement in more than 4 installments.

2(a)(11) *"Consumer"*.

1. *Scope.* Guarantors, endorsers, and sureties are not generally consumers for purposes of the regulation, but they may be entitled to rescind under certain circumstances and they may have certain rights if they are obligated on credit card plans.

2. *Rescission rules.* For purposes of rescission under §§ 226.15 and 226.23, a consumer includes any natural person whose ownership interest in his or her principal dwelling is subject to the risk of loss. Thus, if a security interest is taken in A's ownership interest in a house and that house is A's principal dwelling, A is a consumer for purposes of rescission, even if A is not liable, either primarily or secondarily, on the underlying consumer credit transaction. An ownership interest does not include, for example, leaseholds or inchoate rights, such as dower.

3. *Land trusts.* Credit extended to land trusts, as described in the commentary to § 226.3(a), is considered to be extended to a natural person for purposes of the definition of consumer.

2(a)(12) *"Consumer credit"*.

1. *Primary purpose.* There is no precise test for what constitutes credit offered or extended for personal, family, or household purposes, nor for what constitutes the primary purpose. See, however, the discussion of business purposes in the commentary to § 226.3(a).

2(a)(13) *"Consummation"*.

1. *State law governs.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. *Credit v. sale.* Consummation does not occur when the consumer becomes contractually committed to a *sale* transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement. For example, when a consumer pays a nonrefundable deposit to purchase an automobile, a purchase contact may be created, but consummation for purposes of the regulation does not occur unless the consumer also contracts for financing at that time.

2(a)(14) *"Credit"*.

1. *Exclusions.* The following situations are not considered credit for purposes of the regulation:

- Layaway plans, unless the consumer is contractually obligated to continue making payments. Whether the consumer is so obligated is a matter to be determined under applicable law. The fact that the consumer is not entitled to a refund of any amounts paid towards the cash price of the merchandise does not bring layaways within the definition of credit.
- Tax liens, tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy. However, third-party financing of such obligations (for example, a bank loan obtained to pay off a tax lien) is credit for purposes of the regulation.
- Insurance premium plans that involve payment in installments with each installment representing the payment for insurance coverage for a certain future period of time, unless the consumer is contractually obligated to continue making payments.
- Home improvement transactions that involve progress payments, if the consumer pays, as the work progresses, only for work completed and has no contractual obligation to continue making payments.
- "Borrowing" against the accrued cash value of an insurance policy or a pension ac-

count, if there is no independent obligation to repay.

- Letters of credit.
- The execution of option contracts. However, there may be an extension of credit when the option is exercised, if there is an agreement at that time to defer payment of a debt.
- Investment plans in which the party extending capital to the consumer risks the loss of the capital advanced. This includes, for example, an arrangement with a home purchaser in which the investor pays a portion of the downpayment and of the periodic mortgage payments in return for an ownership interest in the property, and shares in any gain or loss of property value.
- Mortgage assistance plans administered by a government agency in which a portion of the consumer's monthly payment amount is paid by the agency. No finance charge is imposed on the subsidy amount and that amount is due in a lump-sum payment on a set date or upon the occurrence of certain events. (If payment is not made when due, a new note imposing a finance charge may be written, which may then be subject to the regulation.)

2(a)(15) "Credit card".

1. *Usable from time to time.* A credit card must be usable from time to time. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

2. *Examples.* Examples of credit cards include:

- A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit
- A card that accesses both a credit and an asset account (that is, a debit-credit card)
- An identification card that permits the consumer to defer payment on a purchase
- An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension

In contrast, credit card does not include, for example:

- A check guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.
- Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

2(a)(16) "Credit sale".

1. *Special disclosure.* If the seller is a creditor in the transaction, the transaction is a credit sale and the special credit sale disclosures (that is, the disclosures under § 226.18(j)) must be given. This applies even if there is more than one creditor in the transaction and the creditor making the disclosures is not the seller. See the commentary to § 226.17(d).

2. *Sellers who arrange credit.* If the seller of the property or services involved arranged for financing but is not a creditor as to that sale, the transaction is not a credit sale. Thus, if a seller assists the consumer in obtaining a direct loan from a financial institution and the consumer's note is payable to the financial institution, the transaction is a loan and only the financial institution is a creditor.

3. *Refinancings.* Generally, when a credit sale is refinanced within the meaning of § 226.20(a), loan disclosures should be made. However, if a new sale of goods or services is also involved, the transaction is a credit sale.

4. *Incidental sales.* Some lenders "sell" a product or service—such as credit, property, or health insurance—as part of a loan transaction. Section 226.4 contains the rules on whether the cost of credit life, disability or property insurance is part of the finance charge. If the insurance is financed, it may be disclosed as a separate credit sale transaction or disclosed as part of the primary transaction; if the latter approach is taken, either loan or credit sale disclosures may be made. See the commentary to § 226.17(c)(1) for further discussion of this point.

5. *Credit extensions for educational purposes.* A credit extension for educational purposes in which an educational institution is the creditor may be treated as either a credit sale or a loan, regardless of whether the funds are given directly to the student, credited to the student's account, or disbursed to other persons on the student's behalf. The disclosure of the total sale price need not be given if the transaction is treated as a loan.

2(a)(17) "Creditor".

1. *General.* The definition contains four independent tests. If any one of the tests is met, the person is a creditor for purposes of that particular test.

Paragraph 2(a)(17)(i).

1. *Prerequisites.* This test is composed of 2 requirements, both of which must be met in order for a particular credit extension to be subject to the regulation and for the credit extension to count towards satisfaction of the numerical tests mentioned in footnote 3 to § 226.2(a)(17). *First,* there must be either or both of the following:

- A written (rather than oral) agreement to pay in more than 4 installments. A letter that merely confirms an oral agreement does not constitute a written agreement for purposes of the definition.

- A finance charge imposed for the credit. The obligation to pay the finance charge need not be in writing.

Second, the obligation must be payable to the person in order for that person to be considered a creditor. If an obligation is made payable to "bearer," the creditor is the one who initially accepts the obligation.

2. *Assignees*. If an obligation is initially payable to one person, that person is the creditor even if the obligation by its terms is simultaneously assigned to another person. For example:

- An auto dealer and a bank have a business relationship in which the bank supplies the dealer with credit sale contracts that are initially made payable to the dealer and provide for the immediate assignment of the obligation to the bank. The dealer and purchaser execute the contract only after the bank approves the creditworthiness of the purchaser. Because the obligation is initially payable on its face to the dealer, the dealer is the only creditor in the transaction.

3. *Numerical tests*. The examples below illustrate how the numerical tests of footnote 3 are applied. The examples assume that consumer credit with a finance charge or written agreement for more than 4 installments was extended in the years in question and that the person did not extend such credit in 1982.

4. *Counting transactions*. For purposes of closed-end credit, the creditor counts each credit transaction. For open-end credit, "transactions" means accounts, so that outstanding accounts are counted instead of individual credit extensions. Normally the number of transactions is measured by the preceding calendar year; if the requisite number is met, then the person is a creditor for all transactions in the current year. However, if the person did not meet the test in the preceding year, the number of transactions is measured by the current calendar year. For example, if the person extends consumer credit 26 times in 1983, it is a creditor for purposes of the regulation for the last extension of credit in 1983 and for all extensions of consumer credit in 1984. On the other hand, if a business begins in 1983 and extends consumer credit 20 times, it is not a creditor for purposes of the regulation in 1983. If it extends consumer credit 75 times in 1984, however, it becomes a creditor for purposes of the regulation (and must begin making disclosures) after the 25th extension of credit in that year and is a creditor for all extensions of consumer credit in 1985.

5. *Relationship between consumer credit in general and credit secured by a dwelling*. Extensions of credit secured by a dwelling are counted towards the 25-extensions test. For example, if in 1983 a person extends unsecured consumer credit 23 times and consumer credit secured by a dwelling twice, it becomes a creditor for the succeeding extensions of credit, whether or not they are secured by a dwelling. On the other hand, extensions of consumer credit not secured by a dwelling are *not* counted towards the number of credit extensions secured by a dwelling. For example, if in 1983 a person extends credit not secured by a dwelling 8 times and credit secured by a dwelling 3 times, it is not a creditor.

6. *Effect of satisfying one test*. Once one of the numerical tests is satisfied, the person is also a creditor for the other type of credit. For example, in 1983 a person extends consumer credit secured by a dwelling 5 times. That person is a creditor for all succeeding credit extensions, whether they involve credit secured by a dwelling or not.

7. *Trusts*. In the case of credit extended by trusts, each individual trust is considered a separate entity for purposes of applying the criteria. For example:

- A bank is the trustee for 3 trusts: Trust A makes 15 extensions of consumer credit annually; Trust B makes 10 extensions of consumer credit annually; and Trust C makes 30 extensions of consumer credit annually. Only Trust C is a creditor for purposes of the regulation.

8. *Loans from employee savings plans*. Some employee savings plans permit participants to borrow money up to a certain percentage of their account balances. Unless each participant's account is an individual trust, the numerical tests should be applied to the plan as a whole rather than to the individual accounts, even if the loan amount is determined by reference to the balance in an individual account and the repayments are credited to the individual account.

Paragraph 2(a)(17)(ii). [Reserved]

Paragraph 2(a)(17)(iii).

1. *Card issuers subject to Subpart B*. Section 226.2(a)(17)(iii) makes certain card issuers creditors for purposes of the open-end credit provisions of the regulation. This includes, for example, the issuers of so-called travel and entertainment cards that expect repayment at the first billing and do not impose a finance charge. Since all disclosures are to be made only as applicable, such card issuers would omit finance charge disclosures. Other provisions of the regulation regarding such areas as scope, definitions, determination of which charges are finance charges, Spanish language disclosures, record retention, and use of model forms, also apply to such card issuers.

Paragraph 2(a)(17)(iv).

1. *Card issuers subject to Subparts B and C*. Section 226.2(a)(17)(iv) includes as creditors card issuers extending closed-end credit in which there is a finance charge or an

agreement to pay in more than 4 installments. These card issuers are subject to the appropriate provisions of Subparts B and C, as well as to the general provisions.

2(a)(18) "Downpayment".

1. *Allocation.* If a consumer makes a lump-sum payment, partially to reduce the cash price and partially to pay prepaid finance charges, only the portion attributable to reducing the cash price is part of the downpayment. (See the commentary to § 226.2(a)(23).)

2. *Pick-up payments.* Creditors may treat the deferred portion of the down-payment, often referred to as "pick-up payments," in a number of ways. If the pick-up payment is treated as part of the downpayment:

- It is subtracted in arriving at the amount financed under § 226.18(b).
- It may, but need not, be reflected in the payment schedule under § 226.18(g).

If the pick-up payment does not meet the definition (for example, if it is payable after the second regularly scheduled payment) or if the creditor chooses not to treat it as part of the downpayment:

- It must be included in the amount financed.
- It must be shown in the payment schedule.

Whichever way the pick-up payment is treated, the total of payments under § 226.18(h) must equal the sum of the payments disclosed under § 226.18(g).

2(a)(19) "Dwelling".

1. *Scope.* A dwelling need not be the consumer's *principal* residence to fit the definition and thus a vacation or second home could be a dwelling. However, for purposes of the definition of residential mortgage transaction and the right to rescind, a dwelling must be the principal residence of the consumer. See the commentary to §§ 226.2(a)(24), 226.15, and 226.23.

2. *Use as a residence.* Mobile homes, boats, and trailers are dwellings if they are in fact used as residences, just as are condominium and cooperative units. Recreational vehicles, campers, and the like not used as residences are not dwellings.

3. *Relation to exemptions.* Any transaction involving a security interest in a consumer's principal dwelling (as well as in any real property) remains subject to the regulation despite the general exemption in § 226.3(b) for credit extensions over $25,000.

2(a)(20) "Open-end credit".

1. *General.* This definition describes the characteristics of open-end credit (for which the applicable disclosure and other rules are contained in Subpart B), as distinct from closed-end credit. Open-end credit is consumer credit that is extended under a plan and meets *all 3* criteria set forth in the definition.

2. *Existence of a plan.* The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer. Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multi-featured plan.

3. *Repeated transactions.* Under this criterion, the creditor must reasonably contemplate repeated transactions. This means that the credit plan must be usable from time to time and the creditor must legitimately expect that there will be repeat business rather than a one-time credit extension. The creditor must expect repeated dealings with the consumer under the credit plan as a whole, and need not believe the consumer will reuse a particular feature of the plan. A standard based on reasonable belief by a creditor necessarily includes some margin for judgmental error. The fact that a particular consumer does not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. For example, if much of the customer base of a clothing store makes repeat purchases, the fact that some consumers only use the plan once would not affect the characterization of the store's plan as open-end credit. The criterion regarding repeated transactions is a question of fact to be decided in the context of the creditor's type of business and the creditor's relationship with the consumer. For example:

- It would be more reasonable for a thrift institution chartered for the benefit of its members to contemplate repeated transactions with a member, than for a seller of aluminum siding to make the same assumption about its customers.
- It would be more reasonable for a bank to make advances from a line of credit for the purchase of an automobile than for an automobile dealer to sell a car under an open-end plan.

4. *Finance charge on an outstanding balance.* The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment

schedule can be calculated. A plan does not meet this criterion if there is *no* possibility that a periodic finance charge will be imposed on the outstanding balance. Some plans, such as certain "china club" plans, feature free-ride periods if the consumer pays all or a specified portion of the outstanding balance within a given time period. For example, the creditor might not impose finance charges in any month in which the consumer pays 1/10 of the balance. Thus, a plan could meet this finance charge criterion even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in its entirety or in installments) within the time necessary to avoid finance charges.

5. *Reusable line.* The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. The creditor may verify credit information such as the consumer's continued income and employment status or information for security purposes. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a close-end credit loan commitment. For example:

- Under a closed-end commitment, the creditor might agree to lend a total of $10,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full $10,000, no more is advanced under that particular agreement, even if there has been repayment of a portion of the debt.

This criterion does not mean that the creditor must establish a specific credit limit for the line of credit or that the line of credit must always be replenished to its original amount. The creditor may reduce a credit limit or refuse to extend new credit in a particular case due to changes in the economy, the creditor's financial condition, or the consumer's creditworthiness. While consumers should have a reasonable expectation of obtaining credit as long as they remain current and within any preset credit limits, further extensions of credit need not be an absolute right in order for the plan to meet the self-replenishing criterion.

6. *Open-end real estate mortgages.* Some credit plans call for negotiated advances under so-called open-end real estate mortgages. Each such plan must be independently measured against the definition of open-end credit, regardless of the terminology used in the industry to describe the plan. The fact that a particular plan is called an open-end real estate mortgage, for example, does not, by itself, mean that it is open-end credit under the regulation.

2(a)(21) "Periodic rate".

1. *Basis.* The periodic rate may be stated as a percentage (for example, 1½% per month) or as a decimal equivalent (for example, .015 monthly). It may be based on any portion of a year the creditor chooses. Some creditors use 1/360 of an annual rate as their periodic rate. These creditors:

- May disclose a 1/360 rate as a "daily" periodic rate, without further explanation, if it is in fact only applied 360 days per year. But if the creditor applies that rate for 365 days, the creditor must note that fact and, of course, disclose the true annual percentage rate.
- Would have to apply the rate to the balance to disclose the annual percentage rate with the degree of accuracy required in the regulation (that is, within 1/8 of 1 percentage point of the rate based on the actual 365 days in the year).

2. *Transaction charges.* "Periodic rate" does not include initial one-time transaction charges, even if the charge is computed as a percentage of the transaction amount.

2(a)(22) "Person".

1. *Joint ventures.* A joint venture is an organization and is therefore a person.

2. *Attorneys.* An attorney and his or her client are considered to be the same person for purposes of this regulation when the attorney is acting within the scope of the attorney-client relationship with regard to a particular transaction.

3. *Trusts.* A trust and its trustee are considered to be the same person for purposes of this regulation.

2(a)(23) "Prepaid finance charge".

1. *General.* Prepaid finance charges must be taken into account under § 226.18(b) in computing the disclosed amount financed, and must be disclosed if the creditor provides an itemization of the amount financed under § 226.18(c).

2. *Examples.* Common examples of prepaid finance charges include:

- Buyer's points.
- Service fees.
- Loan fees.
- Finder's fees.
- Loan guarantee insurance.
- Credit investigation fees.

However, in order for these or any other finance charges to be considered prepaid, they must be either paid separately in cash or check or withheld from the proceeds. Prepaid finance charges include any portion of the finance charge paid prior to or at closing or settlement.

3. *Exclusions.* "Add-on" and "discount" finance charges are not prepaid finance

charges for purposes of this regulation. Finance charges are not "prepaid" merely because they are precomputed, whether or not a portion of the charge will be rebated to the consumer upon prepayment. See the commentary to § 226.18(b).

4. *Allocation of lump-sum payments.* In a credit sale transaction involving a lump-sum payment by the consumer and a discount or other item that is a finance charge under § 226.4, the discount or other item is a prepaid finance charge to the extent the lump-sum payment is not applied to the cash price. For example, a seller sells property to a consumer for $10,000, requires the consumer to pay $3,000 at the time of the purchase, and finances the remainder as a closed-end credit transaction. The cash price of the property is $9,000. The seller is the creditor in the transaction and therefore the $1,000 difference between the credit and cash prices (the discount) is a finance charge. (See the commentary to §§ 226.4(b)(9) and 226.4(c)(5).) If the creditor applies the entire $3,000 to the cash price and adds the $1,000 finance charge to the interest on the $6,000 to arrive at the total finance charge, all of the $3,000 lump-sum payment is a downpayment and the discount is not a prepaid finance charge. However, if the creditor only applies $2,000 of the lump-sum payment to the cash price, then $2,000 of the $3,000 is a downpayment and the $1,000 discount is a prepaid finance charge.

2(a)(24) "Residential mortgage transaction".

1. *Relation to other sections.* This term is important in six provisions in the regulation:

- Section 226.4(c)(7)—exclusions from the finance charge.
- Section 226.15(f)—exemption from the right of rescission.
- Section 226.18(q)—whether or not the obligation is assumable.
- Section 226.19—special timing rules.
- Section 226.20(b)—disclosure requirements for assumptions.
- Section 226.23(f)—exemption from the right of rescission.

2. *Lien status.* The definition is not limited to first lien transactions. For example, a consumer might assume a paid-down first mortgage (or borrow part of the purchase price) and borrow the balance of the purchase price from a creditor who takes a second mortgage. The second mortgage transaction is a "residential mortgage transaction" if the dwelling purchased is the consumer's principal residence.

3. *Principal dwelling.* A consumer can only have *one* principal dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of applying this definition to a particular transaction. See the commentary to §§ 226.15(a) and 226.23(a).

4. *Construction financing.* If a transaction meets the definition of a residential mortgage transaction and the creditor chooses to disclose it as several transactions under § 226.17(c)(6), each one is considered to be a residential mortgage transaction, even if different creditors are involved. For example:

- The creditor makes a construction loan to finance the initial construction of the consumer's principal dwelling, and the loan will be disbursed in 5 advances. The creditor gives 6 sets of disclosures (5 for the construction phase and 1 for the permanent phase). Each one is a residential mortgage transaction.
- One creditor finances the initial construction of the consumer's principal dwelling and another creditor makes a loan to satisfy the construction loan and provide permanent financing. Both transactions are residential mortgage transactions.

5. *Acquisition.* A transaction is not "to finance the acquisition" of the consumer's principal dwelling (and therefore is not a residential mortgage transaction) if the consumer had previously purchased the dwelling and acquired some title to the dwelling, even though the consumer has not acquired full legal title. Thus, the following types of transactions are not residential mortgage transactions:

- The financing of a balloon payment due under a land sale contract.
- An extension of credit made to a joint owner of property to buy out the other joint owner's interest.

As a result, in giving the disclosures for these transactions several provisions of the regulation are not applicable, for example, the exceptions to the right of rescission (§§ 226.23(f)(1) and 226.15(f)(1)), the early disclosure requirement (§ 226.19(a)), and the disclosure concerning assumability (§ 226.18(q)). In the following situation, by contrast, since the transaction is not a residential mortgage transaction, no disclosures are required by § 226.20(b) and therefore the right of rescission does not apply:

- A written agreement between a creditor holding a seller's mortgage and the buyer of the property which allows the buyer to assumer the mortgage, where the buyer previously purchased the property and agreed with the seller to make the mortgage payments.

2(a)(25) "Security interest".

1. *Threshold test.* The threshold test is whether a particular interest in property is

recognized as a security interest under applicable law. The regulation does not determine whether a particular interest is a security interest under applicable law. If the creditor is unsure whether a particular interest is a security interest under applicable law (for example, if statutes and case law are either silent or inconclusive on the issue), the creditor may at its option consider such interests as security interests for Truth in Lending purposes. However, the regulation and the commentary do exclude specific interests, such as after-acquired property and accessories, from the scope of the definition regardless of their categorization under applicable law, and these named exclusions may not be disclosed as security interests under the regulation. (But see the discussion of exclusions elsewhere in the commentary to § 226.2(a)(25).)

2. *Exclusions.* The general definition of security interest excludes three groups of interests: incidental interests, interests in after-acquired property, and interests that arise solely by operation of law. These interests may not be disclosed with the disclosures required under § 226.18, but the creditor is not precluded from preserving these rights elsewhere in the contract documents, or invoking and enforcing such rights, if it is otherwise lawful to do so. If the creditor is unsure whether a particular interest is one of the excluded interests, the creditor may, at its option, consider such interests as security interests for Truth in Lending purposes.

3. *Incidental interests.* Incidental interests in property that are not security interests include, among other things:

- Assignment of rents.
- Right to condemnation proceeds.
- Interests in accessories and replacements.
- Interests in escrow accounts, such as for taxes and insurance.
- Waiver of homestead or personal property rights.

The notion of an "incidental interest" does not encompass an explicit security interest in an insurance policy if that policy is the primary collateral for the transaction—for example, in an insurance premium financing transaction.

4. *Operation of law.* Interests that arise solely by operation of law are excluded from the general definition. Also excluded are interests arising by operation of law that are merely repeated or referred to in the contract. However, if the creditor has an interest that arises by operation of law, such as a vendor's lien, and takes an independent security interest in the same property, such as a UCC security interest, the latter interest is a disclosable security interest unless otherwise provided.

5. *Rescission rules.* Security interests that arise solely by operation of law are security interests for purposes of rescission. Examples of such interests are mechanics' and materialmen's liens.

2(b) Rules of construction.

1. *Footnotes.* Footnotes are used extensively in the regulation to provide special exceptions and more detailed explanations and examples. Material that appears in a footnote has the same legal weight as material in the body of the regulation.

References

Statute: Section 103.

Other sections: None.

Other regulations: Regulation E (12 CFR 205.2(d)).

Previous regulation: Sections 226.2, 226.8, and 226.9.

1981 changes: Section 226.2 implements amended section 103 of the act. Separate definitions for "comparative index of credit cost," "discount," "organization," "period," "real property," "real property transaction," "regular price," and "surcharge" have been deleted. The definitions relating specifically to consumer leases are now found in the separate consumer leasing regulation, Regulation M (12 CFR Part 213).

Several terms are now defined elsewhere in the regulation or commentary rather than in § 226.2. For example, "finance charge" is described and explained in § 226.4, and "agricultural purpose" is discussed in the commentary to § 226.3. Some terms, such as "unauthorized use," are now defined as part of the substantive sections to which they apply. Other terms previously defined, such as "customer" and "organization," are merged into new definitions. Section 226.2 contains new definitions for "arranger of credit," "business day," "closed-end credit," "consumer," "consummation," "downpayment," "prepaid finance charge," and "residential mortgage transaction."

The major changes in the definitions are as follows:

"Arranger of credit" has a significantly different meaning. It reflects the statutory amendment that limits "arrangers" to those who regularly arrange credit extensions for persons who are not themselves creditors. This definition was deleted effective October 1, 1982.

"Billing cycle" largely restates the prior definition, but requires cycles to be regular, and allows the four-day variance to be measured from a regular day as well as date. The definition also incorporates an interpretation that cycles may be no longer than quarterly.

"Business day" is new in the sense that the term previously appeared only in a footnote to the rescission provision, but it is now of general applicability. The general rule that it is a day when the creditor is open for business is new, but the rule for rescission purposes is the same as in the previous regulation.

"Cash price" now explicitly permits inclusion of various incidental charges imposed equally in cash and credit transactions.

"Consumer" has a narrower meaning in that guarantors, sureties, and endorsers are excluded from the general definition.

"Consumer credit" reflects the new statutory exemption for agricultural credit.

"Consummation" is a significant departure from longstanding interpretations of the previous definition. It now focuses only on the time the consumer becomes contractually obligated, rather than the time the consumer pays a nonrefundable fee or suffers an economic penalty for failing to go forward with the credit transaction.

"Credit" generally parallels the previous definition, but modifies the previous interpretations of the definition by excluding more transactions.

"Creditor" reflects the statutory amendments to the act that were intended to eliminate the problem of multiple creditors in a transaction. The "regularly" standard is still used, but it is now defined in terms of the frequency of the credit extensions. The new definition also requires that there be a *written* agreement to pay in more than 4 installments if no finance charge is imposed. Finally, the obligation must be initially payable to a person for that person to be the creditor.

"Dwelling" reflects the statutory amendment that expanded the scope of the definition to include *any* residential structure, whether or not it is real property under state law.

"Open-end credit" reflects the amended statutory definition requiring that the creditor reasonably contemplate repeated transactions. The new definition no longer requires the consumer to have the privilege of paying either in installments or in full.

"Periodic rate" combines the previous definitions of "period" and "periodic rate" with clarification in the commentary concerning transaction charges and 360-day-year factors.

"Security interest" is much narrower than the previous definition. Reflecting the legislative history of the simplification amendments, incidental interests are expressly excluded from the definition. Except for purposes of rescission, interests that arise solely by operation of law are also excluded.

Section 226.3—Exempt Transactions

3(a) Business, commercial, agricultural, or organizational credit.

1. *Primary purposes.* A creditor must determine in each case if the transaction is primarily for an exempt purpose. If some question exists as to the primary purpose for a credit extension, the creditor is, of course, free to make the disclosures, and the fact that disclosures are made under such circumstances is not controlling on the question of whether the transaction was exempt.

2. *Factors.* In determining whether credit to finance an acquisition—such as securities, antiques, or art—is primarily for business or commercial purposes (as opposed to a consumer purpose), the following factors should be considered:

- The relationship of the borrower's primary occupation to the acquisition. The more closely related, the more likely it is to be business purpose.
- The degree to which the borrower will personally manage the acquisition. The more personal involvement there is, the more likely it is to be business purpose.
- The ratio of income from the acquisition to the total income of the borrower. The higher the ratio, the more likely it is to be business purpose.
- The size of the transaction. The larger the transaction, the more likely it is to be business purpose.
- The borrower's statement of purpose for the loan.

Examples of business-purpose credit include:

- A loan to expand a business, even if it is secured by the borrower's residence or personal property.
- A loan to improve a principal residence by putting in a business office.
- A business account used occasionally for consumer purposes.

Examples of consumer-purpose credit include:

- Credit extensions by a company to its employees or agents if the loans are used for personal purposes.
- A loan secured by a mechanic's tools to pay a child's tuition.
- A personal account used occasionally for business purposes.

3. *Non-owner-occupied rental property.* Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply. For example, a beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner occupied and is not governed by this special rule. See Comment 3(a)-4, however, for rules relating to owner-occupied rental property.

4. *Owner-occupied rental property.* If credit is extended to acquire, improve, or maintain rental property that is or will be owner-occupied within the coming year, different rules apply:

- Credit extended to acquire the rental property is deemed to be for business purposes if it contains more than *2* housing units.
- Credit extended to improve or maintain the rental property is deemed to be for business purposes if it contains more than *4* housing units. Since the amended statute defines "dwelling" to include 1 to 4 housing units, this rule preserves the right of rescission for credit extended for purposes other than acquisition.

Neither of these rules means that an extension of credit for property containing fewer than the requisite number of units is necessarily consumer credit. In such cases, the determination of whether it is business or consumer credit should be made by considering the factors listed in Comment 3(a)-2.

5. *Business credit later refinanced.* Business-purpose credit that is exempt from the regulation may later be rewritten for consumer purposes. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor.

6. *Agricultural purpose.* An "agricultural purpose" includes the planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing of food, beverages (including alcoholic beverages), flowers, trees, livestock, poultry, bees, wildlife, fish, or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees, or wildlife. The exemption also applies to a transaction involving real property that includes a dwelling (for example, the purchase of a farm with a homestead) if the transaction is primarily for agricultural purposes.

7. *Organizational credit.* The exemption for transactions in which the borrower is not a natural person applies, for example, to loans to corporations, partnerships, associations, churches, unions, and fraternal organizations. The exemption applies regardless of the purpose of the credit extension and regardless of the fact that a natural person may guarantee or provide security for the credit.

8. *Land trusts.* Credit extended for consumer purposes to a land trust is considered to be credit extended to a natural person rather than credit extended to an organization. In some jurisdictions, a financial institution financing a residential real estate transaction for an individual uses a land trust mechanism. Title to the property is conveyed to the land trust for which the financial institution itself is trustee. The underlying installment note is executed by the financial institution in its capacity as trustee and payment is secured by a trust deed, reflecting title in the financial institution as trustee. In some instances, the consumer executes a personal guaranty of the indebtedness. The note provides that it is payable only out of the property specifically described in the trust deed and that the trustee has no personal liability on the note. Assuming the transactions are for personal, family, or household purposes, these transactions are subject to the regulation since in substance (if not form) consumer credit is being extended.

3(b) Credit over $25,000 not secured by real property or a dwelling.

1. *Coverage.* Since a mobile home can be a dwelling under § 226.2(a)(19), this exemption does not apply to a credit extension secured by a mobile home used or expected to be used as the principal dwelling of the consumer, even if the credit exceeds $25,000. A loan commitment for closed-end credit in excess of $25,000 is exempt even though the amounts actually drawn never actually reach $25,000.

2. *Open-end credit.* An open-end credit plan is exempt under § 226.3(b) (unless secured by real property or personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

- The creditor makes a firm commitment to lend over $25,000 with no requirement of additional credit information for any advances.
- The initial extension of credit on the line exceeds $25,000.

3. *Refinanced obligations.* A closed-end loan for over $25,000 may later be rewritten for less than $25,000 or a security interest in real property may be added to an extension of credit for over $25,000. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor.

3(c) Public utility credit.

1. *Examples.* Examples of public utility services include:

- Gas, water, or electrical services.
- Cable television services.
- Installation of new sewer lines, water lines, conduits, telephone poles, or metering equipment in an area not already serviced by the utility.

The exemption does *not* apply to extensions of credit, for example:

- To purchase appliances such as gas or electric ranges, grills, or telephones.

- To finance home improvements such as new heating or air conditioning systems.

3(d) Securities or commodities accounts.

1. *Coverage.* This exemption does not apply to a transaction with a broker registered solely with the state, or to a separate credit extension in which the proceeds are used to purchase securities.

3(e) Home fuel budget plans.

1. *Definition.* Under a typical home fuel budget plan, the fuel dealer estimates the total cost of fuel for the season, bills the customer for an average monthly payment, and makes an adjustment in the final payment for any difference between the estimated and the actual cost of the fuel. Fuel is delivered as needed, no finance charge is assessed, and the customer may withdraw from the plan at any time. Under these circumstances, the arrangement is exempt from the regulation, even if a charge to cover the billing costs is imposed.

3(f) Student loan programs.

1. *Coverage.* This exemption applies to the Guaranteed Student Loan program (administered by the Federal government, State, and private non-profit agencies), the Auxiliary Loans to Assist Students (also known as PLUS) program, and the National Direct Student Loan program.

References

Statute: Sections 103 (s) and (t) and 104.

Other sections: Section 226.12 (a) and (b).

Previous regulation: Section 226.3 and Interpretations §§ 226.301 and 226.302.

1981 changes: The business credit exemption has been expanded to include credit for agricultural purposes. The rule of Interpretation § 226.302, concerning credit relating to structures containing more than 4 housing units, has been modified and somewhat expanded by providing more exclusions for transactions involving rental property.

The exemption for transactions above $25,000 secured by real estate has been narrowed; all transactions secured by the consumer's principal dwelling (even if not considered real property) are now subject to the regulation.

The public utility exemption now covers the financing of the extension of a utility into an area not earlier served by the utility, in addition to the financing of services.

The securities credit exemption has been extended to broker-dealers registered with the CFTC as well as the SEC.

A new exemption has been created for home fuel budget plans.

Section 226.4—Finance Charge

4(a) Definition.

1. *Charges in comparable cash transactions.* Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service. For example, the following items are not finance charges:

- Taxes, license fees, or registration fees paid by both cash and credit customers.
- Discounts that are available to cash and credit customers, such as quantity discounts.
- Discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular financial institution. This is the case even if an individual must pay cash to obtain the discount, provided credit customers who are members of the group and don't qualify for the discount pay no more than the nonmember cash customers.
- Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to or required of both cash and credit customers for the same price.

In contrast, the following items are finance charges:

- Inspection and handling fees for the staged disbursement of construction loan proceeds.
- Fees for preparing a Truth in Lending disclosure statement.
- Charges for a required maintenance or service contract imposed only in a credit transaction.

If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge. For example:

- If an escrow agent is used in both cash and credit sales of real estate and the agent's charge is $100 in a cash transaction and $150 in a credit transaction, only $50 is a finance charge.

2. *Costs of doing business.* Charges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor may take such costs into consideration in determining the interest rate to be charged or the cash price of the property or service sold. However, if the creditor separately imposes a charge on the consumer to cover certain costs, the charge is a finance charge if it otherwise meets the definition. For example:

- A discount imposed on a credit obligation when it is assigned by a seller-creditor to another party is not a finance charge as long as the discount is not separately imposed on the consumer. (See § 226.4(b)(6).)

3. *Charges by third parties.* Charges imposed on the consumer by someone other than the creditor for services not required by the creditor are not finance charges, as long as the creditor does not retain the charges.

For example:

- A fee charged by a loan broker to a consumer, provided the creditor does not require the use of a broker (even if the creditor knows of the loan broker's involvement or compensates the broker)
- A tax imposed by a state or other governmental body on the credit transaction that is payable by the consumer (even if the tax is collected by the creditor)

4. *Forfeitures of interest.* If the creditor reduces the interest rate it pays or stops paying interest on the consumer's deposit account or any portion of it for the term of a credit transaction (including, for example, an overdraft on a checking account or a loan secured by a certificate of deposit), the interest lost is a finance charge. (See the commentary to § 226.4(c)(6).) For example:

- A consumer borrows $5,000 for 90 days and secures it with a $10,000 certificate of deposit paying 15% interest. The creditor charges the consumer an interest rate of 6% on the loan and stops paying interest on $5,000 of the $10,000 certificate for the term of the loan. The interest lost is a finance charge and must be reflected in the annual percentage rate on the loan.

However, the consumer must be *entitled* to the interest that is not paid in order for the lost interest to be a finance charge. For example:

- A consumer wishes to buy from a financial instititution a $10,000 certificate of deposit paying 15% interest but has only $4,000. The financial institution offers to lend the consumer $6,000 at an interest rate of 6%, but will pay the 15% interest only on the amount of the consumer's deposit, $4,000. The creditor's failure to pay interest on the $6,000 does not result in an additional finance charge on the extension of credit, provided the consumer is entitled by the deposit agreement with the financial institution to interest only on the amount of the consumer's deposit.
- A consumer enters into a combined time deposit/credit agreement with a financial institution that establishes a time deposit account and an open-end line of credit. The line of credit may be used to borrow against the funds in the time deposit. The agreement provides for an interest rate on any credit extension of, for example, 1%. In addition, the agreement states that the creditor will pay 0% interest on the amount of the time deposit that corresponds to the amount of the credit extension(s). The interest that is not paid on the time deposit by the financial institution is not a finance charge (and therefore does not affect the annual percentage rate computation).

5. *Treatment of fees for use of automated teller machines.* Any charge imposed on a cardholder by a card issuer for the use of an automated teller machine (ATM) to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is not a finance charge to the extent that it does not exceed the charge imposed by the card issuer on its cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. (See the commentary to § 226.6(b).)

4(b) Examples of finance charges.

1. *Relationship to other provisions.* Charges or fees shown as examples of finance charges in § 226.4(b) may be excludable under § 226.4(c), (d), or (e). For example:

- Premiums for credit life insurance, shown as an example of a finance charge under § 226.4(b)(7), may be excluded if the requirements of § 226.4(d)(1) are met.
- Appraisal fees mentioned in § 226.4(b)(4) are excluded for real property or residential mortgage transactions under § 226.4(c)(7).

Paragraph 4(b)(2).

1. *Checking account charges.* The checking or transaction account charges discussed in § 226.4(b)(2) include, for example, the following situations:

- An account with an overdraft line of credit incurs a $4.50 service charge while an account without a credit feature has a $2.50 service charge; the $2.00 difference is a finance charge. If the difference is not related to account activity, however, it may be excludable as a participation fee. (See the commentary to § 226.4(c)(4).)
- A service charge of $5.00 for each item that triggers an overdraft credit line is a finance charge. However, a charge imposed uniformly for any item that overdraws a checking account, regardless of whether the items are paid or returned and whether the account has a credit feature or not, is not a finance charge.

Paragraph 4(b)(3).

1. *Assumption fees.* The assumption fees mentioned in § 226.4(b)(3) are finance charges only when the assumption occurs and the fee is imposed on the new buyer. The assumption fee is a finance charge in the new buyer's transaction.

Paragraph 4(b)(5).

1. *Credit loss insurance.* Common examples of the insurance against credit loss mentioned in § 226.4(b)(5) are mortgage guaranty insurance, holder in due course insurance, and repossession insurance. Such premiums must be included in the finance charge only for the period that the creditor requires the insurance to be maintained.

Paragraphs 4(b) (7) and (8).

1. *Pre-existing insurance policy.* The insurance discussed in § 226.4(b) (7) and (8) does not include an insurance policy (such as a life or an automobile collision insurance policy) that is already owned by the consumer, even if the policy is assigned to or otherwise made payable to the creditor to satisfy an insurance requirement. Such a policy is not "written in connection with" the transaction, as long as the insurance was not purchased for use in that credit extension, since it was previously owned by the consumer.

2. *Insurance written after consummation.* In closed-end credit transactions, insurance sold after consummation is not "written in connection with" the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation (although credit sale disclosures may be required for the insurance if it is financed).

3. *Substitution of life insurance.* The premium for a life insurance policy purchased and assigned to satisfy a credit life insurance requirement must be included in the finance charge, but only to the extent of the cost of the credit life insurance if purchased from the creditor or the actual cost of the policy (if that is less than the cost of the insurance available from the creditor). If the creditor does not offer the required insurance, the premium to be included in the finance charge is the cost of a policy of insurance of the type, amount, and term required by the creditor.

4. *Other insurance.* Fees for required insurance not of the types described in § 226.4(b) (7) and (8) are finance charges and are not excludable. For example:

- The premium for a hospitalization insurance policy, if it is required to be purchased only in a credit transaction, is a finance charge.

Paragraph 4(b)(9).

1. *Discounts for payment by other than credit.* The discounts to induce payment by other than credit mentioned in § 226.4(b)(9) include, for example, the following situation:

- The seller of land offers individual tracts for $10,000 each. If the purchaser pays cash, the price is $9,000, but if the purchaser finances the tract with the seller the price is $10,000. The $1,000 difference is a finance charge for those who buy the tracts on credit.

2. *Exception for cash discounts.* Discounts offered to induce consumers to pay for property or services by cash, check, or other means not involving the use of either an open-end credit plan or a credit card (whether open-end or closed-end credit is extended on the card) may be excluded from the finance charge under section 167(b) of the Act (as amended by Pub. L. 97-25, July 27, 1981). The discount may be in whatever amount the seller desires, either as a percentage of the regular price (as defined in section 103(z) of the Act, as amended) or a dollar amount. This provision applies only to transactions involving an open-end credit plan or a credit card. The merchant must offer the discount to prospective buyers whether or not they are cardholders or members of the open-end credit plan. The merchant may, however, make other distinctions. For example:

- The merchant may limit the discount to payment by cash, and not offer it for payment by check or by use of a debit card.
- The merchant may establish a discount plan that allows a 15% discount for payment by cash, a 10% discount for payment by check, and a 5% discount for payment by a particular credit card. None of these discounts is a finance charge.

Section 171(c) of the Act excludes section 167(b) discounts from treatment as a finance charge or other charge for credit under any state usury or disclosure laws.

3. *Determination of the regular price.* The "regular price" is critical in determining whether the difference between the price charged to cash customers and credit customers is a "discount" or a "surcharge," as these terms are defined in amended section 103 of the Act. The "regular price" is defined in section 103 of the Act as "the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit account or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted. . . ." For example, in the sale of motor vehicle fuel, the tagged or posted price is the price displayed at the pump. As a result, the higher price (the open-end credit or credit card price) must be displayed at the pump, either alone or along with the cash price. Service station operators may designate separate pumps or separate islands as being for either cash or credit purchases and display only the appropriate prices at the various pumps. If a pump is capable of displaying on its meter either a cash or a credit price depending upon the consumer's means of payment, both the cash price and the credit price must be displayed at the pump. A service station operator may display the cash price of fuel by itself on a curb sign, as long as the sign clearly indicates that the price is limited to cash purchases.

4(c) Charges excluded from the finance charge.

Paragraph 4(c)(1).

1. *Application fees.* An application fee that is excluded from the finance charge is a charge to recover the costs associated with processing applications for credit. The fee may cover the costs of services such as credit reports, credit investigations, and appraisals. The creditor is free to impose the fee in only certain of its loan programs, such as mortgage loans. However, if the fee is to be excluded from the finance charge under § 226.4(c)(1), it must be charged to all applicants, not just to applicants who are approved or who actually receive credit.

Paragraph 4(c)(2).

1. *Late payment charges.* Late payment charges can be excluded from the finance charge under § 226.4(c)(2) whether or not the person imposing the charge continues to extend credit on the account or continues to provide property or services to the consumer. In determining whether a charge is for actual unanticipated late payment on a 30-day account, for example, factors to be considered include:

- The terms of the account. For example, is the consumer required by the account terms to pay the account balance in full each month? If not, the charge may be a finance charge.
- The practices of the creditor in handling the accounts. For example, regardless of the terms of the account, does the creditor allow consumers to pay the accounts over a period of time without demanding payment in full or taking other action to collect? If no effort is made to collect the full amount due, the charge may be a finance charge.

Section 226.4(c)(2) applies to late payment charges imposed for failure to make payments as agreed, as well as failure to pay an account in full when due.

2. *Other excluded charges.* Charges for "delinquency, default, or a similar occurrence" include, for example, charges for reinstatement of credit privileges or for submitting as payment a check that is later returned unpaid.

Paragraph 4(c)(3).

1. *Assessing interest on an overdraft balance.* A charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

Paragraph 4(c)(4).

1. *Participation fees.* The participation fees mentioned in § 226.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly or other periodic basis as well as annually; however, minimum monthly charges or other charges based on current account activity are not excluded from the finance charge by § 226.4(c)(4). (See the commentary to § 226.4(b)(2).)

Paragraph 4(c)(5).

1. *Seller's points.* The seller's points mentioned in § 226.4(c)(5) include any charges imposed by the creditor upon the non-creditor seller of property for providing credit to the buyer or for providing credit on certain terms. These charges are excluded from the finance charge even if they are passed on to the buyer, for example, in the form of a higher sales price. Seller's points are frequently involved in real estate transactions guaranteed or insured by governmental agencies. A "commitment fee" paid by a non-creditor seller (such as a real estate developer) to the creditor should be treated as seller's points. Buyer's points (that is, points charged to the buyer by the creditor), however, are finance charges.

2. *Other seller-paid amounts.* Mortgage insurance premiums and other charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. In such cases, the creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available, as called for by the estimate provisions of the regulation.

Paragraph 4(c)(6).

1. *Lost interest.* Certain federal and state laws mandate a percentage differential between the interest rate paid on a deposit and the rate charged on a loan secured by that deposit. In some situations because of usury limits the creditor must reduce the interest rate paid on the deposit and, as a result, the consumer loses some of the interest that would otherwise have been earned. Under § 226.4(c)(6), such "lost interest" need not be included in the finance charge. This rule applies only to an interest reduction imposed because a rate differential is required by law and a usury limit precludes compliance by any other means. If the creditor imposes a differential that exceeds that required, only the lost interest attributable to the excess amount is a finance charge. (See the commentary to § 226.4(a).)

Paragraph 4(c)(7).

1. *Real estate or residential mortgage transaction charges.* The list of charges in § 226.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third

party. In addition, credit report fees include not only the cost of the report itself, but also the cost of verifying information in the report. If a lump sum is charged for several services and includes a charge that is not excludable, a portion of the total should be allocated to that service and included in the finance charge. A charge for a lawyer's attendance at the closing or a charge for conducting the closing (for example, by a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in § 226.4(c)(7) (for example, reviewing or completing documents), even if other incidental services, such as explaining various documents or disbursing funds for the parties, are performed. In all cases, charges excluded under § 226.4(c)(7) must be bona fide and reasonable.

4(d) Insurance.

1. *General.* Section 226.4(d) permits insurance premiums and charges to be excluded from the finance charge. The required disclosures must be made in writing. The rules on location of insurance disclosures for closed-end transactions are in § 226.17(a).

2. *Timing of disclosures.* If disclosures are given early, for example under § 226.17(f) or § 226.19(a), the creditor need not redisclose if the actual premium is different at the time of consummation. If insurance disclosures are not given at the time of early disclosure and insurance is in fact written in connection with the transaction, the disclosures under § 226.4(d) must be made in order to exclude the premiums from the finance charge.

3. *Premium rate increases.* The creditor should disclose the premium amount based on the rates currently in effect and need not designate it as an estimate even if the premium rates may increase. An increase in insurance rates after consummation of a closed-end credit transaction or during the life of an open-end credit plan does not require redisclosure in order to exclude the additional premium from treatment as a finance charge.

4. *Unit-cost disclosures.* One of the transactions for which unit-cost disclosures (such as 50 cents per year for each $100 of the amount financed) may be used in place of the total insurance premium involves a particular kind of insurance plan. For example, a consumer with a current indebtedness of $8,000 is covered by a plan of credit life insurance coverage with a maximum of $10,000. The consumer requests an additional $4,000 loan to be covered by the same insurance plan. Since the $4,000 loan exceeds, in part, the maximum amount of indebtedness that can be covered by the plan, the creditor may properly give the insurance cost disclosures on the $4,000 loan on a unit-cost basis.

5. *Required credit life insurance.* Credit life, accident, health, or loss-of-income insurance must be voluntary in order for the premiums or charges to be excluded from the finance charge. Whether the insurance is in fact required or optional is a factual question. If the insurance is required, the premiums must be included in the finance charge, whether the insurance is purchased from the creditor or from a third party. If the only option the creditor gives the consumer is to purchase credit life insurance from the creditor or to assign an existing life insurance policy, and the consumer purchases the credit life insurance, the premium must be included in the finance charge. (If the consumer assigns a pre-existing policy instead, no premium is included in the finance charge. See the commentary to § 226.4(b)(7) and (8).)

6. *Other types of voluntary insurance.* Insurance is not credit life, accident, health, or loss-of-income insurance if the creditor or the credit account of the consumer is not the beneficiary of the insurance coverage. If such insurance is not required by the creditor as an incident to or a condition of credit, it is not covered by § 226.4.

7. *Signatures.* If the creditor offers a number of insurance options under § 226.4(d), the creditor may provide a means for the consumer to sign or initial for each option, or it may provide for a single authorizing signature or initial with the options selected designated by some other means, such as a check mark. The insurance authorization may be signed or initialed by any consumer, as defined in § 226.2(a)(11), or by an authorized user on a credit card account.

8. *Property insurance.* To exclude property insurance premiums or charges from the finance charge, the creditor must allow the consumer to choose the insurer and disclose that fact. This disclosure must be made whether or not the property insurance is available from or through the creditor. The requirement that an option be given does not require that the insurance be readily available from other sources. The premium or charge must be disclosed only if the consumer elects to purchase the insurance from the creditor; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation.

9. *Single interest insurance.* Blanket and specific single interest coverage are treated the same for purposes of the regulation. A charge for either type of single interest insurance may be excluded from the finance charge if:

- The insurer waives any right of subrogation.
- The other requirements of § 226.4(d)(2) are met. This includes, of course, giving the

consumer the option of obtaining the insurance from a person of the consumer's choice. The creditor need not ascertain whether the consumer is able to purchase the insurance from someone else.

10. *Single-interest insurance defined.* The term "single-interest insurance"as used in the regulation refers only to the types of coverage traditionally included in the term "vendor's single-interest insurance" (or "VSI"), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement, and skip. Some comprehensive insurance policies may include a variety of additional coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do not qualify for exclusion from the finance charge under § 226.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the nonexcludable coverages and included in the finance charge. However, such allocation is not required if the total premium in fact attributable to all of the non-VSI coverages included in the policy is $1.00 or less (or $5.00 or less in the case of a multiyear policy).

11. *Initial term.* The initial term of insurance coverage determines the period for which a premium amount must be disclosed. In some cases the initial term is clear, for example, a property insurance policy on an automobile written for one year (even though the term of the credit transaction is four years) or a credit life insurance policy for the term of the credit transaction purchased by paying or financing a single premium. In other cases, however, it may not be clear what the initial term of the insurance is, for example, when the consumer agrees to pay a premium that is assessed periodically and the consumer is under no obligation to continue making the payments. In cases such as this, the cost disclosure may be made on the basis of a premium for one year of insurance coverage. The premium must be clearly labeled as being for one year.

12. *Loss-of-income insurance.* The loss-of-income insurance mentioned in § 226.4(d) includes involuntary unemployment insurance, which provides that some or all of the consumer's payments will be made if the consumer becomes unemployed involuntarily.

4(e) Certain security interest charges.

1. *Examples.* Examples of charges excludable from the finance charge under § 226.4(*e*)(1) include:

- Charges for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents.
- Stamps evidencing payment of taxes on property if the stamps are required to file a security agreement on the property.

Only sums actually paid to public officials are excludable under § 226.4(e)(1).

2. *Itemization.* The various charges described in § 226.4(*e*)(1) may be totaled and disclosed as an aggregate sum, or they may be itemized by the specific fees and taxes imposed. If an aggregate sum is disclosed, a general term such as security interest fees or "filing fees" may be used.

3. *Notary fees.* In order for a notary fee to be excluded under § 226.4(e)(1), all of the following conditions must be met:

- The document to be notarized is one used to perfect, release, or continue a security interest.
- The document is required by law to be notarized.
- A notary is considered a public official under applicable law.
- The amount of the fee is set or authorized by law.

4. *Non-filing insurance.* The exclusion in § 226.4(*e*)(2) is available only if non-filing insurance is purchased. If the creditor collects and simply retains a fee as a sort of "self-insurance" against non-filing it may not be excluded from the finance charge. If the non-filing insurance premium exceeds the amount of the fees excludable from the finance charge under § 226.4(e)(1), only the excess is a finance charge. For example:

- The fee for perfecting a security interest is $5.00 and the fee for releasing the security interest is $3.00. The creditor charges $10.00 for non-filing insurance. Only $8.00 of the $10.00 is excludable from the finance charge.

4(f) Prohibited offsets.

1. *Earnings on deposits or investments.* The rule that the creditor shall not deduct any earnings by the consumer or deposits or investments applies whether or not the creditor has a security interest in the property.

References

Statute: Sections 106, 167, and 171(c).

Other sections: Sections 226.9(d) and 226.12.

Previous regulation: Section 226.4 and Interpretations §§ 226.401 through 226.407.

1981 changes: While generally continuing the rules under the previous regulation, § 226.4 reflects amendments to section 106 of the act and makes certain other changes in the rules for determining the finance charge. For example, § 226.4(a) expressly excludes from the finance charge amounts payable in comparable cash transactions. Section 226.8(o) of the previous regulation, dealing with discounts for prompt payment of a credit sale, was deleted in the revised regulation since the general test for a finance charge now focuses on a comparison of cash and credit transactions. With respect to various exclusions from the finance charge: application fees imposed on all applicants are no longer finance charges; continuing to extend credit to a consumer is no longer a controlling test for determining whether a late payment charge is bona fide; seller's points are not to be included in the finance charge; and the special exclusions for real estate transactions apply to all "residential mortgage transactions."

The simplified rules for excluding insurance from the finance charge allow unit-cost disclosure in certain closed-end credit transactions; permit initials as well as signatures on the authorization; permit any consumer to authorize insurance for other consumers; and delete the requirement that the authorization be separately dated.

SUBPART B—OPEN-END CREDIT

Section 226.5—General Disclosure Requirements

5(a) Form of disclosures.

Paragraph 5(a)(1).

1. *Clear and conspicuous.* The "clear and conspicuous" standard requires that disclosures be in a reasonably understandable form. It does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. The standard does not prohibit:

- Pluralizing required terminology ("finance charge" and "annual percentage rate").
- Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.
- Sending promotional material with the required disclosures.
- Using commonly accepted or readily understandable abbreviations (such as "mo." for "month" or "Tx." for "Texas") in making any required disclosures.
- Using codes or symbols such as "APR" (for annual percentage rate), "FC" (for finance charge), or "Cr" (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.

2. *Integrated document.* The creditor may make both the initial disclosures (§ 226.6) and the periodic statement disclosures (§ 226.7) on more than one page, and use both the front and the reverse sides, so long as the pages constitute an integrated document. An integrated document would not include disclosure pages provided to the consumer at different times or disclosures interspersed on the same page with promotional material. An integrated document would include, for example:

- Multiple pages provided in the same envelope that cover related material and are folded together, numbered consecutively, or clearly labelled to show that they relate to one another.
- A brochure that contains disclosures and explanatory material about a range of services the creditor offers, such as credit, checking account, and electronic fund transfer features.

Paragraph 5(a)(2).

1. *When disclosures must be "more conspicuous."* The terms "finance charge" and "annual percentage rate", when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the two cases provided in footnote 9. At the creditor's option, "finance charge" and "annual percentage rate" may also be disclosed more conspicuously than the other required disclosures even when the regulation does not so require. The following examples illustrate these rules:

- In disclosing the annual percentage rate as required by § 226.6(a)(2), the term "annual percentage rate" is subject to the "more conspicuous" rule.
- In disclosing the amount of the finance charge, required by § 226.7(*f*), the term "finance charge" is subject to the "more conspicuous" rule.
- Although neither "finance charge" nor "annual percentage rate" need be emphasized when used as part of general informational material or in textual descriptions of other terms, emphasis is permissible in such cases. For example, when the terms appear as part of the explanations required under § 226.6(a) (3) and (4), they may be equally conspicuous as the disclosures required under §§ 226.6(a)(2) and 226.7(g).

2. *Making disclosures more conspicuous.* In disclosing the terms "finance charge" and "annual percentage rate" more conspicuously, only the words "finance charge" and "annual percentage rate" should be accentuated. For example, if the term "total finance charge" is used, only "finance charge" should be emphasized. The disclosures may be made more conspicuous by, for example:

- Capitalizing the words when other disclosures are printed in lower case.
- Putting them in bold print or a contrasting color.
- Underlining them.
- Setting them off with asterisks.
- Printing them in larger type.

3. *Disclosure of figures—exception to "more conspicuous" rule.* The terms

"annual percentage rate" and "finance charge" need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).

5(b) Time of disclosures.

5(b)(1) Initial disclosures.

1. *Disclosure before the first transaction.* The rule that the initial disclosure statement must be furnished "before the first transaction" requires delivery of the initial disclosure statement before the consumer becomes obligated on the plan (for example, before the consumer makes the first purchase, receives the first advance, or pays a fee under the plan).

- If the consumer pays a membership fee before receiving the Truth in Lending disclosures, or the consumer agrees to the imposition of a membership fee at the time of application and the Truth in Lending disclosure statement is not given at that time, disclosures are timely as long as the consumer, after receiving the disclosures, can reject the plan. The creditor must refund the membership fee if it has been paid, or clear the account if it has been debited to the consumer's account.
- If the consumer receives a cash advance check at the same time the Truth in Lending disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).
- Initial disclosures need not be given before the imposition of an application fee under § 226.4(c)(1).
- If, after receiving the disclosures, the consumer uses the account, pays a fee, or negotiates a cash advance check, the creditor may consider the account not rejected for purposes of this section.

2. *Reactivation of suspended account.* If an account is temporarily suspended (for example, because the consumer has exceeded a credit limit, or because a credit card is reported lost or stolen) and then is reactivated, no new initial disclosures are required.

3. *Reopening closed account.* If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new initial disclosures are required. No new initial disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the "new" account then continues on the same terms.

4. *Converting closed-end to open-end credit.* If a closed-end credit transaction is converted to an open-end credit account under a written agreement with the consumer, the initial disclosures under § 226.6 must be given before the consumer becomes obligated on the open-end credit plan. (See the commentary to § 226.17 on converting open-end credit to closed-end credit.)

5(b)(2) Periodic statements.

Paragraph 5(b)(2)(i).

1. *Periodic statements not required.* Periodic statements need not be sent in the following cases:

- If the creditor adjusts an account balance so that at the end of the cycle the balance is less than $1—so long as no finance charge has been imposed on the account for that cycle.
- If a statement was returned as undeliverable. If a new address is provided, however, within a reasonable time before the creditor must send a statement, the creditor must resume sending statements. Receiving the address at least 20 days before the end of a cycle would be a reasonable amount of time to prepare the statement for that cycle. For example, if an address is received 22 days before the end of the June cycle, the creditor must send the periodic statement for the June cycle. (See § 226.13(a)(7).)

2. *Termination of credit privileges.* When an open-end account is terminated without being converted to closed-end credit under a written agreement, the creditor must continue to provide periodic statements to those consumers entitled to receive them under § 226.5(b)(2)(i) (for example, when an open-end credit plan ends and consumers are paying off outstanding balances) and must continue to follow all of the other open-end credit requirements and procedures in Subpart B.

Paragraph 5(b)(2)(ii).

1. *14-day rule.* The 14-day rule for mailing or delivering periodic statements does not apply if charges (for example, transaction or activity charges) are imposed regardless of the timing of a periodic statement. The 14-day rule does apply, for example:

- If current debits retroactively become subject to finance charges when the balance is not paid in full by a specified date.
- If charges other than finance charges will accrue when the consumer does not make timely payments (for example, late payment charges or charges for exceeding a credit limit).

2. *Computer malfunction.* Footnote 10 does not extend to the failure to provide a periodic statement because of computer malfunction.

3. *Calling for periodic statements.* The creditor may permit consumers to call for their periodic statements, but may not require them to do so. If the consumer wishes to pick up the statement and the plan has a free-ride period, the statement must be made available in accordance with the 14-day rule.

5(c) Basis of disclosures and use of estimates.

1. *Legal obligation.* The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.

- The legal obligation is determined by applicable state or other law.
- The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.
- The legal obligation normally is presumed to be contained in the contract that evidences the agreement. But this may be rebutted if another agreement between the parties legally modifies that contract.

2. *Estimates—obtaining information.* Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time disclosures are made. The "reasonably available" standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. In using estimates, the creditor is not required to disclose the basis for the estimated figures, but may include such explanations as additional information. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to insurance companies for the cost of insurance.

3. *Estimates—redisclosure.* If the creditor makes estimated disclosures, redisclosure is not required for that consumer, even though more accurate information becomes available before the first transaction. For example, in an open-end plan to be secured by real estate, the creditor may estimate the appraisal fees to be charged; such an estimate might reasonably be based on the prevailing market rates for similar appraisals. If the exact appraisal fee is determinable after the estimate is furnished but before the consumer receives the first advance under the plan, no new disclosure is necessary.

5(d) Multiple creditors; multiple consumers.

1. *Multiple creditors.* Under § 226.5(d):

- Creditors must choose which of them will make the disclosures.
- A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.
- All disclosures for the open-end credit plan must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure.
- In some open-end credit programs involving multiple creditors, the consumer has the option (for example, at the end of a billing cycle) to pay creditor A directly or to transfer to creditor B all or part of the amount owing. If the consumer elects the latter option, the consumer no longer is obligated to creditor A for the specific amount(s) transferred. In such a case, creditor A and creditor B may send separate periodic statements that reflect the separate obligations owed to each.

2. *Multiple consumers.* Disclosures may be made to either obligor on a joint account. Disclosure responsibilities are not satisfied by giving disclosures to only a surety or guarantor for a principal obligor or to an authorized user. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 226.15.

5(e) Effect of subsequent events.

1. *Events causing inaccuracies.* Inaccuracies in disclosures are not violations if attributable to events occurring after disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to provide a new disclosure(s) under § 226.9(c).

2. *Use of inserts.* When changes in a creditor's plan affect required disclosures, the creditor may use inserts with outdated disclosure forms. Any insert:

- Should clearly refer to the disclosure provision it replaces.
- Need not be physically attached or affixed to the basic disclosure statement.
- May be used only until the supply of outdated forms is exhausted.

References

Statute: Sections 121 (a) through (c), 122 (a) and (b), 124, 127 (a) and (b), and 163(a).

Other sections: Sections 226.6, 226.7, and 226.9.

Previous regulation: Sections 226.6 (a) and (c) through (g), and 226.7 (a) through (e).

1981 changes: Section 226.5 implements amendments to the act and reflects several simplifying changes to the regulation. The use of required terminology, except for "finance charge" and "annual percentage rate," is no longer required. Type size requirements have been deleted. Initial and periodic statement disclosures may be multipage, so long as they constitute an integrated statement. New rules are provided for the basis of disclosures and for the use of estimates. The rules for credit plans involving multiple creditors or multiple consumers now provide that only one creditor need make the disclosures and that the disclosures need be made to only one primarily liable consumer.

Section 226.6—Initial Disclosure Statement

1. *Consistent terminology.* Language on the initial and periodic disclosure statements must be close enough in meaning to enable the consumer to relate the 2 sets of disclosures; however, the language need not be identical. For example, in making the disclosure under § 226.6(a)(3), the creditor may refer to the "outstanding balance at the end of the billing cycle," while the disclosure for § 226.7(i) refers to the "ending balance" or "new balance."

2. *Separate initial disclosures permitted.* In a certain open-end credit program involving more than one creditor—a card issuer of travel-and-entertainment cards and a financial institution—the consumer has the option to pay the card issuer directly or to transfer to the financial institution all or part of the amount owing. In this case, the creditors may send separate initial disclosure statements.

6(a) Finance charge.

Paragraph 6(a)(1)

1. *When finance charges accrue.* Creditors may provide a general explanation about finance charges beginning to run and need not disclose a specific date. For example, a disclosure that the consumer has 30 days from the closing date to pay the new balance before finance charges will accrue on the account would describe when finance charges begin to run.

2. *Free-ride periods.* In disclosing whether or not a free-ride period exists, the creditor need not use "free period," "free-ride period," or any other particular descriptive phrase or term. For example, a statement that "the finance charge begins on the date the transaction is posted to your account" adequately discloses that no free-ride period exists. In the same fashion, a statement that "finance charges will be imposed on any new purchases only if they are not paid in full within 25 days after the close of the billing cycle" indicates that a free-ride period exists in the interim.

Paragraph 6(a)(2).

1. *Range of balances.* The range of balances disclosure is inapplicable:

- If only one periodic rate may be applied to the entire account balance.
- If only one periodic rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to 2 rates (a 1.5% periodic rate on purchase balances of $0-$500, while balances above $500 are subject to a 1% periodic rate). Of course, the creditor must give a range of balances disclosure for the purchase feature.

2. *Variable-rate disclosures—coverage.* This section covers open-end credit plans under which rate changes are part of the plan and are tied to an index or formula. A creditor would use variable-rate disclosures (and thus be excused from the requirement of giving a change-in-terms notice when rate increases occur as disclosed) for plans involving rate changes such as the following:

- Rate changes that are tied to the rate the creditor pays on its 6-month money market certificates.
- Rate changes that are tied to Treasury bill rates.
- Rate changes that are tied to changes in the creditor's commercial lending rate.

In contrast, the creditor's contract reservation to increase the rate without reference to such an index or formula (for example, a plan that simply provides that the creditor reserves the right to raise its rates) would not be considered a variable-rate plan for Truth in Lending disclosure purposes. Moreover, an open-end credit plan in which the employee receives a lower rate contingent upon employment (that is, with the rate to be increased upon termination of employment) is not a variable-rate plan. (With regard to such employee preferential-rate plans, however, *see* comment 9(c)-1, which provides that if the specific change that would occur is disclosed on the initial disclosure statement, no notice of a change in terms need be given when the term later changes as disclosed.)

3. *Variable rate plan—rate(s) in effect.* In disclosing the rate(s) in effect at the time of the initial disclosures (as is required by § 226.6(a)(2)), the creditor may use an insert showing the current rate; may give the rate as of a specified date and then update the disclosure from time to time, for example, each calendar month; or may disclose an estimated rate under § 226.5(c).

4. *Variable rate plan—additional disclosures required.* In addition to disclosing the rates in effect at the time of the initial disclosures, the disclosures under footnote 12 also must be made.

5. *Variable rate plan—index.* The index to be used must be clearly identified; the creditor need not give, however, an explanation of how the index is determined or provide instructions for obtaining it.

6. *Variable rate plan—circumstances for increase.* Circumstances under which the rate(s) may increase include, for example:

- An increase in the Treasury bill rate.
- An increase in the Federal Reserve discount rate.

The creditor must disclose when the increase will take effect; for example,

- "An increase will take effect on the day that the Treasury bill rate increases," or
- "An increase in the Federal Reserve discount rate will take effect on the first day of the creditor's billing cycle."

7. *Variable rate plan—limitations on increase.* In disclosing any limitations on rate

increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. Legal limits such as usury or rate ceilings under State or Federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:

- "The rate on the plan will not exceed 25% annual percentage rate."
- "Not more than ½% increase in the annual percentage rate per year will occur."

8. *Variable rate plan—effects of increase.* Examples of effects that must be disclosed include:

- Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.
- Any increase in the scheduled minimum periodic payment amount.

9. *Variable rate plan—change-in-terms notice not required.* No notice of a change in terms is required for a rate increase under a variable rate plan as defined in Comment 6(a)(2)-2.

10. *Discounted variable-rate plans.* In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.

- For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forego the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.
- When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the initial disclosure statement should reflect: (1) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long it will remain in effect; (2) the current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and (3) the other variable-rate information required by footnote 12 to § 226.6(a)(2).
- In disclosing the current periodic and annual percentage rates that would be applied using the index or formula, the creditor may use any of the disclosure options described in comment 6(a)(2)-3.

Paragraph 6(a)(3).

1. *Explanation of balance computation method.* A shorthand phrase such as "previous balance method" does not suffice in explaining the balance computation method. (See Appendix G-1 for model clauses.)

2. *Allocation of payments.* Disclosure about the allocation of payments and other credits is not required. For example, the creditor need not disclose that payments are applied to late charges, overdue balances, and finance charges before being applied to the principal balance; or in a multifeatured plan, that payments are applied first to finance charges, then to purchases, and then to cash advances. (See Comment 7-1 for definition of multifeatured plan.)

Paragraph 6(a)(4).

1. *Finance charges.* In addition to disclosing the periodic rate(s) under § 226.6(a)(2), disclosure is required of any other type of finance charge that may be imposed, such as minimum, fixed, transaction, and activity charges; required insurance; or appraisal or credit report fees (unless excluded from the finance charge under § 226.4(c)(7)).

6(b) Other charges.

1. *General; examples of other charges.* Under § 226.6(b), significant charges related to the plan (that are not finance charges) must also be disclosed. For example:

- Late payment and over-the-credit-limit charges.
- Fees for providing documentary evidence of transactions requested under §226.13 (billing error resolution).
- Charges imposed in connection with real estate transactions. (See § 226.4(c)(7).)
- Taxes and filing or notary fees excluded from the finance charge under § 226.4(e).
- A tax imposed on the credit transaction by a state or other governmental body, such as a documentary stamp tax on cash advances. (See the commentary to § 226.4(a).)
- Membership or participation fees for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union would not be an "other charge," even if membership is required to apply for credit.
- Automated teller machine (ATM) charges described in comment 4(a)-5 that are not finance charges.

2. *Exclusions.* The following are examples of charges that are not "other charges":

- Fees charged for documentary evidence of transactions for income tax purposes.
- Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.
- Premiums for voluntary credit life or disability insurance, or for property insur-

ance, that are not part of the finance charge.

- Application fees under § 226.4(c)(1).
- A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.
- Charges for submitting as payment a check that is later returned unpaid. (See the commentary to § 226.4(c)(2).)
- Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system. (See also comment 7(b)-2.)

6(c) Security interests.

1. *General.* Disclosure is not required about the type of security interest, or about the creditor's rights with respect to that collateral. In other words, the creditor need not expand on the term "security interest." Also, since no specified terminology is required, the creditor may designate its interest by using, for example, "pledge," "lien," or "mortgage" (instead of "security interest").

2. *Identification of property.* Identification of the collateral by type is satisfied by stating, for example, "motor vehicle" or "household appliances." The creditor may, at its option, provide a more specific identification (for example, a model and serial number).

3. *Spreader clause.* The fact that collateral for pre-existing credit extensions with the institution is being used to secure the present obligation constitutes a security interest and must be disclosed. (Such security interests may be known as "spreader" or "dragnet" clauses, or as "cross-collateralization" clauses.) A specific identification of that collateral is unnecessary, but a reminder of the interest arising from the prior indebtedness is required. This may be accomplished by using language such as "collateral securing other loans with us may also secure this loan." At the creditor's option, a more specific description of the property involved may be given.

4. *Additional collateral.* If collateral is required when advances reach a certain amount, the creditor should disclose the information available at the time of the initial disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the consumer's balance exceeds $1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $1,000, and the creditor must provide a change-in-terms notice under § 226.9(c) at the time the security is taken.

5. *Collateral from third party.* In certain situations, the consumer's obligation may be secured by collateral belonging to a third party. For example, an open-end credit plan may be secured by an interest in property owned by the consumer's parents. In such cases, the security interest is taken in connection with the plan and must be disclosed, even though the property encumbered is owned by someone other than the consumer.

6(d) Statement of billing rights.

See the commentary to Appendix G-3.

References

Statute: Section 127(a).

Other sections: Sections 226.4, 226.5, 226.7, 226.9, 226.14, and Appendix G.

Previous regulation: Section 226.7(a) and Interpretation § 226.706.

1981 changes: Section 226.6 implements the amended statute which requires disclosure of the fact that *no* free period exists. Disclosures about the minimum periodic payment and the Comparative Index of Credit Cost have been eliminated. The security interest disclosures have been simplified. "Other charges" no longer include voluntary credit life or disability insurance, required property insurance premiums, default charges, or fees for collection activity. Disclosures for variable rate plans are now required by the regulation, replacing Interpretation § 226.707. The regulation no longer specifies the exact language to be used for the billing rights notice; creditors may use any version "substantially similar" to the one in Appendix G.

Section 226.7—Periodic Statement

1. *Multifeatured plans.* Some plans involve a number of different features, such as purchases, cash advances, or overdraft checking. Groups of transactions subject to different finance charge terms because of the dates on which the transactions took place are treated like different features for purposes of disclosures on the periodic statements. The commentary includes some special rules for multifeatured plans.

2. *Separate periodic statements permitted.* In a certain open-end credit program involving more than one creditor—a card issuer of travel-and-entertainment cards and a financial institution—the consumer has the option to pay the card issuer directly or to transfer to the financial institution all or part of the amount owing. In this case, the creditors may send separate periodic statements that reflect the separate obligations owed to each.

7(a) Previous balance.

1. *Credit balances.* If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer

that it is a credit balance, rather than a debit balance.

2. *Multifeatured plans.* In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. *Accrued finance charges allocated from payments.* Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

7(b) Identification of transactions.

1. *Multifeatured plans.* In identifying transactions under § 226.7(b) for multifeatured plans, creditors may, for example, choose to arrange transactions by feature (such as disclosing sale transactions separately from cash advance transactions) or in some other clear manner, such as by arranging the transactions in general chronological order.

2. *Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems.* A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.

7(c) Credits.

1. *Identification—sufficiency.* The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)—"credit" would suffice—except if the creditor is using the periodic statement to satisfy the billing error correction notice requirement. (See the commentary to § 226.13 (e) and (f).)

2. *Format.* A creditor may list credits relating to credit extensions (payments, rebates, etc.) together with other types of credits (such as deposits to a checking account), as long as the entries are identified so as to inform the consumer which type of credit each entry represents.

3. *Date.* If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

7(d) Periodic rates.

1. *Disclosure of periodic rates—whether or not actually applied.* Any periodic rate that may be used to compute finance charges (and its corresponding annual percentage rate) must be disclosed whether or not it is applied during the billing cycle. For example:

- If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the rate for each, even if the consumer only makes purchases on the account during the billing cycle.
- If the rate varies (such as when it is tied to a particular index), the creditor must disclose each rate in effect during the cycle for which the statement was issued.

2. *Disclosure of periodic rates required only if imposition possible.* With regard to the periodic rate disclosure (and its corresponding annual percentage rate), only rates that *could have* been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

- If the creditor is changing rates effective during the next billing cycle (either because it is changing terms or because of a variable rate plan), the rates required to be disclosed under § 226.7(d) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the monthly rate applied during May was 1.5 percent, but the creditor will increase the rate to 1.8 percent effective June 1, 1.5 percent (and its corresponding annual percentage rate) is the only required disclosure under § 226.7(d) for the periodic statement reflecting the May account activity.
- If the consumer has an overdraft line that might later be expanded upon the consumer's request to include secured advances, the rates for the secured advance feature need not be given until such time as the consumer has requested and received access to the additional feature.
- If rates applicable to a particular type of transaction changed after a certain date, and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. *Multiple rates—same transaction.* If two or more periodic rates are applied to the *same* balance for the same type of transaction (for example, if the finance charge consists of a monthly periodic rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at .1% per month on the same outstanding balance), the creditor may do either of the following:

- Disclose each periodic rate, the range of balances to which it is applicable, and the corresponding annual percentage rate for each. (For example, 1.5% monthly, 18% annual percentage rate; .1% monthly, 1.2% annual percentage rate.)

- Disclose one composite periodic rate (that is, 1.6% per month) along with the applicable range of balances and corresponding annual percentage rate.

4. *Corresponding annual percentage rate.* In disclosing the annual percentage rate that corresponds to each periodic rate, the creditor may use "corresponding annual percentage rate," "nominal annual percentage rate," "corresponding nominal annual percentage rate," or similar phrases.

5. *Rate same as actual annual percentage rate.* When the corresponding rate is the same as the actual annual percentage rate (historical rate) required to be disclosed (§ 226.7(g)), the creditor need disclose only one annual percentage rate, but must use the phrase "annual percentage rate."

6. *Ranges of balances.* See Comment 6(a)(2)-1.

7(e) Balance on which finance charge computed.

1. *Limitation to periodic rates.* Section 226.7(e) only requires disclosure of the balance(s) to which a periodic rate was applied and does not apply to balances on which other kinds of finance charges (such as transaction charges) were imposed. For example, if a consumer obtains a $1,500 cash advance subject to both a 1% transaction fee and a 1% monthly periodic rate, the creditor need only disclose the balance subject to the monthly rate (which might include portions of earlier cash advances not paid off in previous cycles).

2. *Split rates applied to balance ranges.* If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5 percent applied to the first $500, and a monthly periodic rate of 1 percent to the remainder. This option to disclose a combined balance does not apply when the finance charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment 7(e)-5.)

3. *Monthly rate on average daily balance.* If a creditor computes a finance charge on the average daily balance by application of a monthly periodic rate or rates, the balance is adequately disclosed if the statement gives the amount of the average daily balance on which the finance charge was computed, and also states how the balance is determined.

4. *Multifeatured plans.* In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature or group of features subject to different periodic rates or different balance computation methods. Separate balances are not required, however, merely because a "free-ride" period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (See, for example, comment 7(e)-5.)

5. *Daily rate on daily balance.* If the finance charge is computed on the balance each day by application of one or more daily periodic rates, the balance on which the finance charge was computed may be disclosed in any of the following ways for each feature:

- If a single daily periodic rate is imposed, the balance to which it is applicable may be stated as:
  —A balance for each day in the billing cycle
  —A balance for each day in the billing cycle on which the balance in the account changes
  —The sum of the daily balances during the billing cycle
  —The average daily balance during the billing cycle, in which case the creditor shall explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of the finance charge.
- If two or more daily periodic rates may be imposed, the balances to which the rates are applicable may be stated as:
  —A balance for each day in the billing cycle
  —A balance for each day in the billing cycle on which the balance in the account changes
  —Two or more average daily balances, each applicable to the daily periodic rates imposed for the time that those rates were in effect, as long as the creditor explains that the finance charge is or may be determined by (1) multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (2) multiplying each of the results by the applicable daily periodic rate, and (3) adding these products together.

6. *Explanation of balance computation method.* See the commentary to § 226.6(a)(3).

7. *Information to compute balance.* In connection with disclosing the finance charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

8. *Non-deduction of credits.* The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§ 226.7(c)) and indicating which credits will not be deducted in determining the balance (for example, "credits after the 15th of the month are not deducted in computing the finance charge.")

9. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed even though the same computation method is used for determining the balance for each feature. In these cases, one explanation of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(e)-2. In these cases, one explanation of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

7(f) Amount of finance charge.

1. *Total.* A total finance charge amount for the plan is not required.

2. *Itemization—types of finance charges.* Each type of finance charge (such as periodic rates, transaction charges, and minimum charges) imposed during the cycle must be separately itemized; for example, disclosure of only a combined finance charge attributable to both a minimum charge and transaction charges would not be permissible. Finance charges of the same type may be disclosed, however, individually or as a total. For example, 5 transaction charges of $1 may be listed separately or as $5.

3. *Itemization—different periodic rates.* Whether different periodic rates are applicable to different types of transactions or to different balance ranges, the creditor may give the finance charge attributable to each rate or may give a total finance charge amount. For example, if a creditor charges 1.5% per month on the first $500 of a balance and 1% per month on amounts over $500, the creditor may itemize the two components ($7.50 and $1.00) of the $8.50 charge, or may disclose $8.50.

4. *Multifeatured plans.* In a multifeatured plan, in disclosing the amount of the finance charge attributable to the application of periodic rates no total periodic rate disclosure for the entire plan need be given.

5. *Finance charges not added to account.* A finance charge that is not included in the new balance because it is payable to a third party (such as required life insurance) must still be shown on the periodic statement as a finance charge.

6. *Finance charges other than periodic rates.* See Comment 6(a)(4)-1 for examples.

7. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, no disclosure is required of finance charges that have accrued since the last payment.

7(g) Annual percentage rate.

1. *Rate same as corresponding annual percentage rate.* See Comment 7(d)-5.

2. *Multifeatured plans.* In a multifeatured plan, the actual annual percentage rate that reflects the finance charge imposed during the cycle may be separately stated for each feature, or may be described as a composite for the whole plan. If separate rates are given, a composite annual percentage rate for the entire plan is optional.

7(h) Other charges.

1. *Identification.* In identifying any "other charges" actually imposed during the billing cycle, the type is adequately described as "late charge" or "membership fee," for example. (See Comment 6(b)-1 for examples of "other charges.")

2. *Date.* The date of imposing or debiting "other charges" need not be disclosed.

3. *Total.* Disclosure of the total amount of other charges is optional.

4. *Itemization—types of "other charges".* Each type of "other charge" (such as late payment charges, over-the-credit-limit charges, ATM fees that are not finance charges, and membership fees) imposed during the cycle must be separately itemized; for example, disclosure of only a total of "other charges" attributable to both an over-the-credit-limit charge and a late payment charge would not be permissible. "Other charges" of the same type may be disclosed, however, individually or as a total.

For example, three ATM fees of $1 may be listed separately or as $3.

7(i) Closing date of billing cycle; new balance.

1. *Credit balances.* See Comment 7(a)-1.

2. *Multifeatured plans.* In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.

7(j) Free-ride period.

1. *Wording.* Although the creditor is required to indicate any time period the consumer may have to pay the balance outstanding without incurring additional finance charges, no specific wording is required, so long as the language used is consistent with that used on the initial disclosure statement. For example, "To avoid additional finance charges, pay the new balance before ———" would suffice.

7(k) Address for notice of billing errors.

1. *Wording.* The periodic statement must contain the address for consumers to use in asserting billing errors under § 226.13. Since all disclosures must be "clear," the statement should indicate the general purpose for the address, although no elaborate explanation or particular wording is required.

2. *Telephone number.* A telephone number may be included, but the address for billing error inquiries, which is the required disclosure, must be clear and conspicuous. One way to ensure that the address is clear and conspicuous is to include a precautionary instruction that telephoning will not preserve the consumer's billing error rights. Both of the billing rights statements in Appendix G contain such a precautionary instruction, so that a creditor could, by including either of these statements with each periodic statement, ensure that the required address is provided in a clear and conspicuous manner.

References

Statute: Section 127(b).

Previous regulation: Section 226.7(b)(1) and Interpretation §§ 226.701, 226.703, 226.706, and 226.707.

Other sections: Sections 226.4 through 226.6, 226.8, 226.14, and Appendix G.

1981 changes: Under § 226.7, required terminology is no longer mandated except for the terms "finance charge" and "annual percentage rate." The requirement in the previous regulation about the location of disclosures has been deleted.

Under the revised § 226.7, disclosure of credits to the account no longer have to indicate the type of credit. A short disclosure for variable rate plans must be included on the periodic statement. Disclosures relating to multifeatured accounts have been clarified.

Section 226.7 now specifically requires a periodic statement disclosure of "other charges" (non-finance charges related to the plan) that are actually imposed during the billing cycle.

Disclosures about minimum charges that might be imposed on the account and about the Comparative Index of Credit Cost have been deleted.

Section 226.8—Identification of Transactions

1. *Application of identification rules.* Section 226.8 deals with the requirement (imposed by § 226.7(b)) for identification of each credit transaction made during the billing cycle. The rules for identifying transactions on periodic statements vary, depending on whether:

- The transaction involves sale credit (purchases) or nonsale credit (cash advances, for example).
- An actual copy of the credit document reflecting the transaction accompanies the statement (this is the distinction between so-called "country club" and "descriptive" billing).
- The creditor and seller are the same or related persons.

2. *Sale credit.* The term "sale credit" refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit (see Comment 8-3 if access is by means of a check) to obtain goods or services from a merchant, whether or not the merchant is the card issuer. "Sale credit" even includes:

- Premiums for voluntary credit life insurance whether sold by the card issuer or another person.
- The purchase of funds-transfer services (such as telegrams) from an intermediary.

3. *Nonsale credit.* The term "nonsale credit" refers to any form of loan credit including, for example:

- Cash advances.
- Overdraft checking.
- The use of a "supplemental credit device" in the form of a check or draft or the use of the overdraft feature of a debit card, even if such use is in connection with a purchase of goods or services.
- Miscellaneous debits to remedy mispostings, returned checks, and similar entries.

4. *Actual copy.* An actual copy does not include a recreated document. It includes, for

example, a duplicate, carbon, or photographic copy, but does not include a so-called "facsimile draft" in which the required information is typed, printed, or otherwise recreated. If a facsimile draft is used, the creditor must follow the rules that apply when a copy of the credit document is not furnished.

5. *Same or related persons.* The term "same or related persons" refers to, for example:

- Franchised or licensed sellers of a creditor's product or service.
- Sellers who assign or sell open-end sales accounts to a creditor or arrange for such credit under a plan that allows the consumer to use the credit only in transactions with that seller.

A person is not related to the creditor merely because, for example:

- The person and the creditor have an agreement by which the person is authorized to honor the creditor's credit card under the terms specified in the agreement.
- The person and the creditor have a corporate connection, such as subsidiary-parent, if that connection is not obvious from the names they use. For example, if XYZ card issuer owns the ABC hotel, the card issuer and the hotel are not "related."

6. *Transactions resulting from promotional material.* In describing transactions with third-party sellers resulting from promotional material mailed by the creditor, creditors may use the rules either for "related" or for "non-related" sellers and creditors.

7. *Credit insurance offered through the creditor.* When credit insurance that is not part of the finance charge (for example, voluntary credit life insurance) is offered to the consumer through the creditor, but is actually provided by another company, the creditor has the option of identifying the premiums in one of two ways on the periodic statement. The creditor may describe the premiums using either the rule in § 226.8(a)(2) for "related" sellers and creditors, or the rule in § 226.8(a)(3) for "non-related" sellers and creditors. This means, therefore, that the creditor may identify the insurance either by providing, under § 226.8(a)(2), a brief identification of the services provided (for example, "credit life insurance"), or by disclosing, under § 226.8(a)(3), the name and address of the company providing the insurance (for example, ABC Insurance Company, New York, New York). In either event, the creditor would, of course, also provide the amount and the date of the transaction.

8(a) Sale credit.

1. *Date—disclosure of only one date.* If only the required date is disclosed for a transaction, the creditor need not identify it as the "transaction date." If the creditor discloses more than one date (for example, the transaction date and the posting date), the creditor must identify each.

2. *Date—disclosure of month and day only.* The month and day are sufficient disclosure of the date on which the transaction took place, unless the posting of the transaction is delayed so long that the year is needed for a clear disclosure to the consumer.

3. *When transaction takes place.* If the consumer conducts the transaction in person, the date of the transaction is the calendar date on which the consumer made the purchase or order, or secured the advance. For transactions billed to the account on an ongoing basis (other than installments to pay a precomputed amount), the date of the transaction is the date on which the amount is debited to the account. This might include, for example, monthly insurance premiums. For mail or telephone orders, a creditor may disclose as the transaction date either the invoice date, the debiting date, or the date the order was placed by telephone.

4. *Transactions not billed in full.* If sale transactions are not billed in full on any single statement, but are billed periodically in precomputed installments, the first periodic statement reflecting the transaction must show either the full amount of the transaction together with the date the transaction actually took place; *or* the amount of the first installment that was debited to the account together with the date of the transaction or the date on which the first installment was debited to the account. In any event, subsequent periodic statements should reflect each installment due, together with either any other identifying information required by § 226.8(a) (such as the seller's name and address in a three-party situation) or other appropriate identifying information relating the transaction to the first billing. The debiting date for the particular installment, or the date the transaction took place, may be used as the date of the transaction on these subsequent statements.

8(a)(1) Copy of credit document provided.

1. *Format.* The information required by § 226.8(a)(1) may appear either on the copy of the credit document reflecting the transaction or on the periodic statement.

8(a)(2) Copy of credit document not provided—creditor and seller same or related person(s).

1. *Property identification—sufficiency of description.* The "brief identification" provision in § 226.8(a)(2) requires a designation that will enable the consumer to reconcile the periodic statement with the consumer's own records. In determining the sufficiency of the description, the following rules apply:

- While item-by-item descriptions are not necessary, reasonable precision is required.

For example, "merchandise," "miscellaneous," "second-hand goods," or "promotional items" would not suffice.

- A reference to a department in a sales establishment that accurately conveys the identification of the types of property or services available in the department is sufficient—for example, "jewelry," "sporting goods."

2. *Property identification—number or symbol.* The "brief identification" may be made by disclosing on the periodic statement a number or symbol that is related to an identification list printed elsewhere on the statement.

3. *Property identification—additional document.* In making the "brief identification" required by § 226.8(a)(2), the creditor may identify the property by describing the transaction on a document accompanying the periodic statement (for example, on a facsimile draft). (See also footnote 17.)

4. *Small creditors.* Under footnote 18, which provides a further identification alternative to a creditor with fewer than 15,000 accounts, the creditor need count only its own accounts and not others serviced by the same data processor or other shared-service provider.

5. *Date of transaction—foreign transactions.* In a foreign transaction, the debiting date may be considered the transaction date.

8(a)(3) Copy of credit document not provided—creditor and seller not same or related person(s).

1. *Seller's name.* The requirement contemplates that the seller's name will appear on the periodic statement in essentially the same form as it appears on transaction documents provided to the consumer at the time of the sale. The seller's name may also be disclosed as, for example:

- A more complete spelling of the name that was alphabetically abbreviated on the receipt or other credit document.
- An alphabetical abbreviation of the name on the periodic statement even if the name appears in a more complete spelling on the receipt or other credit document.

Terms that merely indicate the form of a business entity, such as "Inc.," "Co.," or "Ltd.," may always be omitted.

2. *Location of transaction.* The disclosure of the location where the transaction took place generally requires an indication of both the city, and the state or foreign country. If the seller has multiple stores or branches within that city, the creditor need not identify the specific branch at which the sale occurred.

3. *No fixed location.* When no meaningful address is available because the consumer did not make the purchase at any fixed location of the seller, the creditor:

- May omit the address.
- May provide some other identifying designation, such as "aboard plane," "ABC Airways Flight," "customer's home," "telephone order," or "mail order."

4. *Date of transaction—foreign transactions.* See Comment 8(a)(2)-5.

8(b) Nonsale credit.

1. *Date of transaction.* If only one of the required dates is disclosed for a transaction, the creditor need not identify it. If the creditor discloses more than one date (for example, transaction date and debiting date), the creditor must identify each.

2. *Amount of transaction.* If credit is extended under an overdraft checking account plan or by means of a debit card with an overdraft feature, the amount to be disclosed is that of the credit extension, not the face amount of the check or the total amount of the debit/credit transaction.

3. *Amount—disclosure on cumulative basis.* If credit is extended under an overdraft checking account plan or by means of a debit card with an overdraft feature, the creditor may disclose the amount of the credit extensions on a cumulative daily basis, rather than the amount attributable to each check or each use of the debit/credit card.

4. *Identification of transaction type.* The creditor may identify a transaction by describing the type of advance it represents, such as cash advance, loan, overdraft loan, or any readily understandable trade name for the credit program.

References

Statute: Section 127(b)(2).

Previous regulation: Section 226.7(k).

Other sections: Section 226.7.

1981 changes: Section 226.8 has been streamlined and reorganized to facilitate its use. Technical detail has been deleted from the Regulation for inclusion in the commentary. The Regulation implements the amended section 127(b)(2) of the Act by providing for protection from civil liability under certain circumstances when required information is not provided and by reducing disclosure responsibilities for certain small creditors. For descriptive billing of nonsale transactions, the regulation now permits the use of the debiting date in all cases.

Section 226.9—Subsequent Disclosure Requirements

9(a) Furnishing statement of billing rights.

9(a)(1) Annual statement.

1. *General.* The creditor may provide the annual billing rights statement:

- By sending it in one billing period per year to each consumer that gets a periodic statement for that period; or

- By sending a copy to all of its account holders sometime during the calendar year but not necessarily all in one billing period (for example, sending the annual notice in connection with renewal cards or when imposing annual membership fees).

2. *Substantially similar.* See the commentary to Appendix G-3.

9(a)(2) Alternative summary statement.

1. *Changing from long-form to short-form statement and vice versa.* If the creditor has been sending the long-form annual statement, and subsequently decides to use the alternative summary statement, the first summary statement must be sent no later than 12 months after the last long-form statement was sent. Conversely, if the creditor wants to switch to the long-form, the first long-form statement must be sent no later than 12 months after the last summary statement.

2. *Substantially similar.* See the commentary to Appendix G-4.

9(b) Disclosures for supplemental credit devices and additional features.

1. *Credit device—examples.* "Credit device" includes, for example, a blank check, payee-designated check, blank draft or order, or authorization form for issuance of a check; it does not include a check issued payable to a consumer representing loan proceeds or the disbursement of a cash advance.

2. *Credit feature—examples.* A new credit "feature" would include, for example:

- The addition of overdraft checking to an existing account (although the regular checks that could trigger the overdraft feature are not themselves "devices").
- The option to use an existing credit card to secure cash advances, when previously the card could only be used for purchases.

Paragraph 9(b)(1).

1. *Same finance charge terms.* If the new means of accessing the account is subject to the same finance charge terms as those previously disclosed, the creditor:

- Need only provide a reminder that the new device or feature is covered by the earlier disclosures. (For example, in mailing special checks that directly access the credit line, the creditor might give a disclosure such as "Use this as you would your XYZ card to obtain a cash advance from our bank"); or
- May remake the § 226.6(a) finance charge disclosures.

Paragraph 9(b)(2).

1. *Different finance charge terms.* If the finance charge terms are different from those previously disclosed, the creditor may satisfy the requirement to give the finance charge terms either by giving a complete set of new initial disclosures reflecting the terms of the added device or feature or by giving only the finance charge disclosures for the added device or feature.

9(c) Change in terms:

1. *"Changes" initially disclosed.* No notice of a change in terms need be given if the specific change is set forth initially, such as: Rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion but does not include specific terms for an increase (for example, when an increase may occur under the creditor's contract reservation right to increase the periodic rate).

2. *State law issues.* Examples of issues not addressed by § 226.9(c) because they are controlled by State or other applicable law include:

- The types of changes a creditor may make.
- How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms required to be disclosed under § 226.6 or increases the minimum payment, unless an exception under § 226.9(c)(2) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day free-ride period on purchases and the consumer will have fewer days during the billing cycle change.

9(c)(1) Written notice required.

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 15 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 15 days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of 15 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change—in two circumstances:

- If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default.
- If the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not "agreements" between the consumer and the creditor for purposes of § 226.9(c)(1): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under State law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

4. *Form of change-in-terms notice.* A complete new set of the initial disclosures containing the changed term complies with § 226.9(c) if the change is highlighted in some way on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term change.

5. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

9(c)(2) *Notice not required.*

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

- A change in the consumer's credit limit.
- A change in the name of the credit card or credit card plan.
- The substitution of one insurer for another.
- A termination or suspension of credit privileges.
- Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as "You may skip your October payment," or "We will waive your finance charges for January," may serve as the change-in-terms notice.

9(d) *Finance Charge Imposed at Time of Transaction*

1. *Disclosure prior to imposition.* A person imposing a finance charge at the time of honoring a consumer's credit card must disclose the amount of the charge, or an explanation of how the charge will be determined, prior to its imposition. This must be disclosed before the consumer becomes obligated for property or services that may be paid for by use of a credit card. For example, disclosure must be given before the consumer has dinner at a restaurant, stays overnight at a hotel, or makes a deposit guaranteeing the purchase of property or services.

References

Statute: Section 127(a)(7).

Other sections: Sections 226.4 through 226.7 and Appendix G.

Previous regulation: Section 226.7 (d) through (f) and (j) and Interpretation §§ 226.705 and 226.708.

1981 changes: Section 226.9(a) implements the statutory change that the long-form statement of billing rights be provided only once a year. The provision now permits two rather than one means of providing the long-form statement to consumers. The verbatim text of the annual statement is no longer required; creditors may use any version "substantially similar" to the one in Appendix G. If the creditor elects to use the alternative summary statement, the new regulation no longer requires that the long-form statement be sent upon receiving a billing error notice and at the consumer's request. The rules in § 226.708 on switching the type of billing rights statement used have been modified.

Under § 226.9(b) disclosure requirements have been streamlined when supplemental credit devices or new credit features are added to an existing open-end plan.

Section 226.9(c) substantially changes the change-in-terms rules. Change-in-terms disclosures must now be made 15 days before the effective date of the change, rather than 15 days before the billing cycle in which the change will take effect. The kinds of changes that will trigger disclosures have been reduced: change-in-terms notices are no longer required for the types of changes described in § 226.9(c)(2). But the provision reverses Interpretation § 226.705, which indicated that certain changes in the balance computation method did not require disclosure because they could result in lowered finance charges; now, any change in the balance computation method requires disclosure.

When a finance charge is imposed at the time of a transaction, § 226.9(d) only requires disclosure of the finance charge at point of sale; the amount financed and annual percentage rate figured in accordance with the closed-end credit provisions need no longer be disclosed. Furthermore, the finance charge disclosure now may be made orally by the person honoring the card.

Section 226.10—Prompt Crediting of Payments

10(a) General rule.

1. *Crediting date.* Section 226.10(a) does not require the creditor to post the payment to the consumer's account on a particular date; the creditor is only required to credit the payment as of the date of receipt.

2. *Date of receipt.* The "date of receipt" is the date that the payment instrument or other means of completing the payment reaches the creditor. For example:

- Payment by check is received when the creditor gets it, not when the funds are collected.
- In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.
- If the consumer elects to have payment made by a third-party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the creditor gets the third-party payor's check or other transfer medium, such as an electronic fund transfer, as long as the payment meets the creditor's requirements as specified under § 226.10(b).

10(b) Specific requirements for payments.

1. *Payment requirements.* The creditor may specify requirements for making payments, such as:

- Requiring that payments be accompanied by the account number or the payment stub.
- Setting a cut-off hour for payment to be received, or set different hours for payment by mail and payments made in person.
- Specifying that only checks or money orders should be sent by mail.
- Specifying that payment is to be made in U.S. dollars.
- Specifying one particular address for receiving payments, such as a post office box.

The creditor may be prohibited, however, from specifying payment by preauthorized electronic fund transfer. (See section 913 of the Electronic Fund Transfer Act.)

2. *Payment requirements—limitations.* Requirements for making payments must be reasonable; it should not be difficult for most consumers to make conforming payments. For example, it would not be reasonable to require that all payments be made in person between 10 a.m. and 11 a.m., since this would require consumers to take time off from their jobs to deliver payments.

3. *Acceptance of non-conforming payments.* If the creditor accepts a non-conforming payment (for example, payment at a branch office, when it had specified that payment be sent to headquarters), finance charges may accrue for the period between receipt and crediting of payments.

4. *Implied guidelines for payments.* In the absence of specified requirements for making payments (see § 226.10(b)):

- Payments may be made at any location where the creditor conducts business.
- Payments may be made any time during the creditor's normal business hours.
- Payments may be made by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the creditor and consumer have so agreed.

References

Statute: Section 164.

Other sections: Section 226.7.

Previous regulation: Section 226.7(g).

1981 changes: Much of the explanatory detail of the previous regulation is now in the commentary. The revised regulation gives the creditor 5 days in which to credit non-conforming payments, whereas the previous regulation required the crediting of such payments promptly, with an outside limit of 5 days. The 5 days in which to credit are available whenever the creditor accepts payment that does not conform to the creditor's disclosed specifications, in contrast to the previous regulation, which only allowed deferred crediting for payments made at the wrong location.

Section 226.11—Treatment of Credit Balances

1. *Timing of refund.* The creditor may also fulfill its obligations under § 226.11 by:

- Refunding any credit balance to the consumer immediately.
- Refunding any credit balance prior to receiving a written request (under § 226.11(b)) from the consumer.
- Making a good faith effort to refund any credit balance before 6 months have passed. If that attempt is unsuccessful, the creditor need not try again to refund the credit balance at the end of the 6-month period.

2. *Amount of refund.* The phrase "any part of the credit balance remaining in the account" in § 226.11(b) and (c) means the amount of the credit balance at the time the creditor is required to make the refund. The creditor may take into consideration intervening purchases or other debits to the consumer's account (including those that have not yet been reflected on a periodic statement) that decrease or eliminate the credit balance.

Paragraph 11(b).

1. *Written requests—standing orders.* The creditor is not required to honor standing orders requesting refunds of any credit balance that may be created on the consumer's account.

Paragraph 11(c).

1. *Good faith effort to refund.* The creditor must take positive steps to return any credit balance that has remained in the account for over 6 months. This includes, if necessary, attempts to trace the consumer through the consumer's last known address or telephone number, or both.

2. *Good faith effort unsuccessful.* Section 226.11 imposes no further duties on the creditor if a good faith effort to return the balance is unsuccessful. The ultimate disposition of the credit balance (or any credit balance of $1 or less) is to be determined under other applicable law.

References

Statute: Section 165.

Previous regulation: Section 226.7(h).

1981 changes: Under the previous regulation, the creditor's duty to refund credit balances applied only to "excess payments"; § 226.11 of the revised regulation implements the amendments to section 165 of the statute which impose refunding duties on the creditor whatever the source of the credit balance. The revised regulation permits the creditor, in computing the refund, to take account of intervening debits, not just the difference between the previous balance and the overpayment as is provided in the previous regulation. The revised regulation gives the creditor 7 business days in which to make the refund after receiving the consumer's written request, whereas the previous regulation required the creditor to make the refund promptly, with an outside limit of 5 business days. This provision also implements the amended statute by requiring a good faith effort to refund the credit balance after 6 months.

Section 226.12—Special Credit Card Provisions

1. *Scope.* Sections 226.12(a) and (b) deal with the issuance and liability rules for credit cards, whether the card is intended for consumer, business, or any other purposes. Sections 226.12(a) and (b) are exceptions to the general rule that the regulation applies only to consumer credit. (See §§ 226.1 and 226.3.)

12(a) Issuance of credit cards.

Paragraph 12(a)(1).

1. *Explicit request.* A request or application for a card must be explicit. For example, a request for overdraft privileges on a checking account does not constitute an application for a credit card with overdraft checking features.

2. *Addition of credit features.* If the consumer has a non-credit card, the addition of credit features to the card (for example, the granting of overdraft privileges on a checking account when the consumer already has a check guarantee card) constitutes issuance of a credit card.

3. *Variance of card from request.* The request or application need not correspond exactly to the card that is issued. For example:

- The name of the card requested may be different when issued.
- The card may have features in addition to those reflected in the request or application.

4. *Permissible form of request.* The request or application may be oral (in response to a telephone solicitation by a card issuer, for example) or written.

5. *Time of issuance.* A credit card may be issued in response to a request made before any cards are ready for issuance (for example, if a new program is established), even if there is some delay in issuance.

6. *Persons to whom cards may be issued.* A card issuer may issue a credit card to the person who requests it, and to anyone else

for whom that person requests a card and who will be an authorized user on the requester's account. In other words, cards may be sent to consumer A on A's request, and also (on A's request) to consumers B and C, who will be authorized users on A's account. In these circumstances, the following rules apply:

- The additional cards may be imprinted in either A's name or in the names of B and C.
- No liability for unauthorized use (by persons other than B and C), not even the $50, may be imposed on B or C since they are merely users and not "cardholders" as that term is defined in § 226.2 and used in § 226.12(b); of course, liability of up to $50 for unauthorized use of B's and C's cards may be imposed on A.
- Whether B and C may be held liable for their own use, or on the account generally, is a matter of state or other applicable law.

7. *Issuance of non-credit cards.* The issuance of an unsolicited device that is not, but may become, a credit card, is not prohibited provided:

- The device has some substantive purpose other than obtaining credit, such as access to non-credit services offered by the issuer;
- It cannot be used as a credit card when issued; and
- A credit capability will be added only on the recipient's request.

For example, the card issuer could send a check guarantee card on an unsolicited basis, but could not add a credit feature to that card without the consumer's specific request. The re-encoding of a debit card or other existing card that had no credit privileges when issued would be appropriate after the consumer has specifically requested a card with credit privileges. Similarly, the card issuer may add a credit feature, for example, by reprogramming the issuer's computer program or automated teller machines, or by a similar program adjustment.

8. *Unsolicited issuance of PINs.* A card issuer may issue personal identification numbers (PINs) to existing credit cardholders without a specific request from the cardholders, provided the PINs cannot be used alone to obtain credit. For example, the PINs may be necessary if consumers wish to use their existing credit cards at automated teller machines or at merchant locations with point-of-sale terminals that require PINs.

Paragraph 12(a)(2).

1. *Renewal.* "Renewal" generally contemplates the regular replacement of existing cards because of, for example, security reasons or new technology or systems. It also includes the re-issuance of cards that have been suspended temporarily, but does not include the opening of a new account after a previous account was closed.

2. *Substitution—examples.* "Substitution" encompasses the replacement of one card with another because the underlying account relationship has changed in some way—such as when the card issuer has:

- Changed its name.
- Changed the name of the card.
- Changed the credit or other features available on the account. For example, the original card could be used to make purchases and obtain cash advances at teller windows. The substitute card might be usable, in addition, for obtaining cash advances through automated teller machines. (If the substitute card constitutes an access device, as defined in Regulation E, then the Regulation E issuance rules would have to be followed.)
- Substituted a card user's name on the substitute card for the cardholder's name appearing on the original card.
- Changed the merchant base. However, the new card must be honored by at least one of the persons that honored the original card.

3. *Substitution—successor card issuer.* "Substitution" also occurs when a successor card issuer replaces the original card issuer (for example, when a new card issuer purchases the accounts of the original issuer and issues its own card to replace the original one). A permissible substitution exists even if the original issuer retains the existing receivables and the new card issuer acquires the right only to future receivables, provided use of the original card is cut off when use of the new card becomes possible.

4. *Substitution—non-credit-card plan.* A credit card that replaces a retailer's open-end credit plan *not* involving a credit card is not considered a substitute for the retailer's plan—even if the consumer used the retailer's plan. A credit card cannot be issued in these circumstances without a request or application.

5. *One-for-one rule.* An accepted card may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances.

6. *One-for-one rule—exception.* The regulation does not prohibit the card issuer from replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

7. *Methods of terminating replaced card.* The card issuer need not physically retrieve

the original card, provided the old card is voided in some way; for example:

- The issuer includes with the new card a notification that the existing card is no longer valid and should be destroyed immediately.
- The original card contained an expiration date.
- The card issuer, in order to preclude use of the card, reprograms computers or issues instructions to authorization centers.

8. *Incomplete replacement.* If a consumer has duplicate credit cards on the same account (Card A—one type of bank credit card, for example), the card issuer may not replace the duplicate cards with one Card A and one Card B (Card B—another type of bank credit card) unless the consumer requests Card B.

12(b) Liability of cardholder for unauthorized use.

1. *Meaning of "cardholder."* For purposes of this provision, "cardholder" includes any person (including organizations) to whom a credit card is issued for any purpose, including business. When a corporation is the cardholder, required disclosures should be provided to the corporation (as opposed to an employee user).

12(b)(1) Limitation on amount.

1. *Meaning of "authority."* Footnote 22 defines unauthorized use in terms of whether the user has "actual, implied, or apparent authority." Whether such authority exists must be determined under state or other applicable law.

2. *Liability limits—dollar amounts.* As a general rule, the cardholder's liability for a series of unauthorized uses cannot exceed either $50 or the value obtained through the unauthorized use before the care issuer is notified, whichever is less.

12(b)(2) Conditions of liability.

1. *Issuer's option not to comply.* A card issuer that chooses not to impose any liability on cardholders for unauthorized use need not comply with the disclosure and identification requirements discussed below.

Paragraph 12(b)(2)(ii).

1. *Disclosure of liability and means of notifying issuer.* The disclosures referred to in § 226.12(b)(2)(ii) may be given, for example, with the initial disclosures under § 226.6, on the credit card itself, or on periodic statements. They may be given at any time preceding the unauthorized use of the card.

Paragraph 12(b)(2)(iii).

1. *Means of identifying cardholder or user.* To fulfill the condition set forth in § 226.12(b)(2)(iii), the issuer must provide some method whereby the cardholder or the authorized user can be identified. This could include, for example, signature, photograph, or fingerprint on the card, or electronic or mechanical confirmation.

2. *Identification by magnetic strip.* Unless a magnetic strip (or similar device not readable without physical aids) must be used in conjunction with a secret code or the like, it would not constitute sufficient means of identification. Sufficient identification also does not exist if a "pool" or group card, issued to a corporation and signed by a corporate agent who will not be a user of the card, is intended to be used by another employee for whom no means of identification is provided.

3. *Transactions not involving card.* The cardholder may not be held liable under § 226.12(b) when the card itself (or some other sufficient means of identification of the cardholder) is not presented. Since the issuer has not provided a means to identify the user under these circumstances, the issuer has not fulfilled one of the conditions for imposing liability. For example, when merchandise is ordered by telephone by a person without authority to do so, using a credit card account number or other number only (which may be widely available), no liability may be imposed on the cardholder.

12(b)(3) Notification to card issuer.

1. *How notice must be provided.* Notice given in a normal business manner—for example, by mail, telephone, or personal visit—is effective even though it is not given to, or does not reach, some particular person within the issuer's organization. Notice also may be effective even though it is not given at the address or phone number disclosed by the card issuer under § 226.12(b)(2)(ii).

2. *Who must provide notice.* Notice of loss, theft, or possible unauthorized use need not be initiated by the cardholder. Notice is sufficient so long as it gives the "pertinent information" which would include the name or card number of the cardholder and an indication that unauthorized use has or may have occurred.

3. *Relationship to § 226.13.* The liability protections afforded to cardholders in § 226.12 do not depend upon the cardholder's following the error resolution procedures in § 226.13. For example, the written notification and time limit requirements of § 226.13 do not affect the section 226.12 protections.

12(b)(5) Business use of credit cards.

1. *Agreement for higher liability for business use cards.* The card issuer may not rely on § 226.12(b)(5) if the business is clearly not in a position to provide 10 or more cards to employees (for example, if the business has only 3 employees). On the other hand, the issuer need not monitor the personnel practices of the business to make sure that it has at least 10 employees at all times.

2. *Unauthorized use by employee.* The protection afforded to an employee against li-

ability for unauthorized use in excess of the limits set in § 226.12(b) applies only to unauthorized use by someone other then the employee. If the employee uses the card in an unauthorized manner, the regulation sets no restriction on the employee's potential liability for such use.

12(c) Right of cardholder to assert claims or defenses against card issuer.

1. *Relationship to § 226.13.* The § 226.12(c) credit card "holder in due course" provision deals with the consumer's right to assert against the card issuer a claim or defense concerning property or services purchased with a credit card, if the merchant has been unwilling to resolve the dispute. Even though certain merchandise disputes, such as non-delivery of goods, may also constitute "billing errors" under § 226.13, that section operates independently of § 226.12(c). The cardholder whose asserted billing error involves undelivered goods may institute the error resolution procedures of § 226.13; but whether or not the cardholder has done so, the cardholder may assert claims or defenses under § 226.12(c). Conversely, the consumer may pay a disputed balance and thus have no further right to assert claims and defenses, but still may assert a billing error if notice of that billing error is given in the proper time and manner. An assertion that a particular transaction resulted from unauthorized use of the card could also be both a "defense" and a billing error.

2. *Claims and defenses assertible.* Section 226.12(c) merely preserves the consumer's right to assert against the card issuer any claims or defenses that can be asserted against the merchant. It does not determine what claims or defenses are valid as to the merchant; this determination must under be made under state or other applicable law.

12(c)(1) General rule.

1. *Situations excluded and included.* The consumer may assert claims or defenses only when the goods or services are "purchased with the credit card." This could include:

- Mail or telephone orders, if the purchase is charged to the credit card account.

But it would exclude:

- Use of a credit card to obtain a cash advance, even if the consumer then uses the money to purchase goods or services. Such a transaction would not involve "property or services purchased with the credit card."
- The purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. (On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to the credit extended on the overdraft line.)
- Purchases made by use of a check guarantee card in conjunction with a cash advance check (or by cash advance checks alone). See footnote 24. A cash advance check is a check that, when written, does not draw on an asset account; instead, it is charged entirely to an open-end credit account.
- Purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit lines (see footnote 24). The debit card exemption applies whether the card accesses an asset account via point-of-sale terminals, automated teller machines, or in any other way, and whether the card qualifies as an "access device" under Regulation E or is only a paper-based debit card. If a card serves both as an ordinary credit card and also as check guarantee or debit card, a transaction will be subject to this rule on asserting claims and defenses when used as an ordinary credit card, but not when used as a check guarantee or debit card.

12(c)(2) Adverse credit reports prohibited.

1. *Scope of prohibition.* Although an amount in dispute may not be reported as delinquent until the matter is resolved:

- That amount may be reported as disputed.
- Nothing in this provision prohibits the card issuer from undertaking its normal collection activities for delinquent accounts.

12(c)(3) Limitations.

Paragraph 12(c)(3)(i).

1. *Resolution with merchant.* The consumer must have tried to resolve the dispute with the merchant. This does not require any special procedures or correspondence between them, and is a matter for factual determination in each case. The consumer is not required to seek satisfaction from the manufacturer of the goods involved. When the merchant is in bankruptcy proceedings, the consumer is not required to file a claim in those proceedings.

Paragraph 12(c)(3)(ii).

1. *Geographic limitation.* The question of where as transaction occurs (as in the case of mail or telephone orders, for example) is to be determined under state or other applicable law.

2. *Merchant honoring card.* The exceptions (stated in footnote 26) to the amount and geographic limitations do not apply if the merchant merely honors, or indicates through signs or advertising that it honors, a particular credit card.

12(d) Offsets by card issuer prohibited.

Paragraph 12(d)(1).

1. *"Holds" on accounts.* "Freezing" or placing a hold on funds in the cardholder's deposit account is the functional equivalent of an offset and would contravene the pro-

hibition in § 226.12(d)(1), unless done in the context of one of the exceptions specified in § 226.12(d)(2). For example, if the terms of a security agreement permitted the card issuer to place a hold on the funds, the hold would not violate the offset prohibition. Similarly, if an order of a bankruptcy court required the card issuer to turn over deposit account funds to the trustee in bankruptcy, the issuer would not violate the regulation by placing a hold on the funds in order to comply with the court order.

2. *Funds intended as deposits.* If the consumer tenders funds as a deposit (to a checking account, for example), the card issuer may not apply the funds to repay indebtedness on the consumer's credit card account.

3. *Types of indebtedness; overdraft accounts.* The offset prohibition applies to any indebtedness arising from transactions under a credit card plan, including accrued finance charges and other charges on the account. The prohibition also applies to balances arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses an overdraft line of credit, the resulting indebtedness is subject to the offset prohibition since it is incurred through a credit card plan, even though the consumer did not use an associated check guarantee or debit card.

4. *When prohibition applies in case of termination of account.* The offset prohibition applies even after the card issuer terminates the cardholder's credit card privileges, if the indebtedness was incurred prior to termination. If the indebtedness was incurred after termination, the prohibition does not apply.

Paragraph 12(d)(2).

1. *Security interest—limitations.* In order to qualify for the exception stated in § 226.12(d)(2), a security interest must be affirmatively agreed to by the consumer, must be disclosed in the issuer's initial disclosures under § 226.6, and must be obtained and enforced only through procedures equally available to other creditors. For example, the consumer may offer a savings account (as an alternative to other personal property, such as an automobile) as security for credit card indebtedness. Another example of a permissible security interest in deposit account funds would be one granted by the consumer in return for an incentive offered by the issuer (for example, lower rates on the credit card account).

2. *Security interest—after-acquired property.* As used in § 226.12(d), the term "security interest" does not exclude (as it does for other Regulation Z purposes) interests in after-acquired property. Thus, a consensual security interest in deposit-account funds, including funds deposited after the granting of the security interest, would constitute a permissible exception to the prohibition on offsets.

3. *Court order.* If the card issuer obtains a judgment against the cardholder, and if State and other applicable law and the terms of the judgment do not so prohibit, the card issuer may offset the indebtedness against the cardholder's deposit account.

Paragraph 12(d)(3).

1. *Automatic payment plans—scope of exception.* With regard to automatic debit plans under § 226.12(d)(3), the following rules apply:

- The cardholder's authorization must be in writing and signed or initialed by the cardholder.
- The authorizing language need not appear directly above or next to the cardholder's signature or initials, provided it appears on the same document and that it clearly spells out the terms of the automatic debit plan.
- If the cardholder has the option to accept or reject the automatic debit feature (such option may be required under section 913 of the Electronic Fund Transfer Act), the fact that the option exists should be clearly indicated.

2. *Automatic payment plans—additional exceptions.* The following practices are not prohibited by § 226.12(d)(1):

- Automatically deducting charges for participation in a program of banking services (one aspect of which may be a credit card plan).
- Debiting the cardholder's deposit account on the cardholder's *specific* request rather than on an *automatic* periodic basis (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill).

12(e) Prompt notification of returns and crediting of refunds.

Paragraph 12(e)(1).

1. *Normal channels.* The term "normal channels" refers to any network or interchange system used for the processing of the original charge slips (or equivalent information concerning the transaction).

Paragraph 12(e)(2).

1. *Crediting account.* The card issuer need not actually post the refund to the consumer's account within 3 business days after receiving the credit statement, provided that it credits the account as of a date within that time period.

References

Statute: Sections 103(1), 132, 133, 135, 162, 166, 167, 169, and 170.

Other sections: Section 226.13.

Other regulations: Regulation E (12 CFR 205).

Previous regulation: Section 226.13.

1981 changes: The issuance rules in § 226.12(a) make clear that cards may be sent to the person making the request and also to any other person for whom a card is requested, except that no liability for unauthorized use may be imposed on persons who are only authorized users.

The principal differences in § 226.12(b) about conditions of liability are as follows: the requirement that the cardholder be given a postage-paid, preaddressed card or envelope for notification of loss or theft has been deleted (corresponding to an amendment to the act); the required disclosures of maximum liability and of means of notification have been simplified; and the required provision of a means of identification has been changed in that the issuer now may provide a means to identify either the cardholder or the authorized user. Finally, anyone may provide the notification to the card issuer, not just the cardholder.

Section 226.12(d) on offsets clarifies that the offset prohibition does not apply to consensual security interests. The separate promptness standard which used to apply in addition to the 7-business-day and 3-business-day standards has been deleted from § 226.12(e) on prompt notification of returns. Section 226.12(f) now clarifies rules on clearing accounts.

Section 226.12(g), dealing with the relationship of the regulation to Regulation E (Electronic Fund Transfers), has been added.

Section 226.13—Billing Error Resolution

1. *General prohibitions.* Footnote 27 prohibits a creditor from responding to a consumer's billing error allegation by accelerating the debt or closing the account, and reflects protections authorized by section 161(d) of the Truth in Lending Act and section 701 of the Equal Credit Opportunity Act. The footnote also alerts creditors that failure to comply with the error resolution procedures may result in the forfeiture of disputed amounts as prescribed in section 161(e) of the act. (Any failure to comply may also be a violation subject to the liability provisions of section 130 of the act.)

2. *Charges for error resolution.* If a billing error occurred, whether as alleged or in a different amount or manner, the creditor may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation) and must credit the consumer's account if such a charge was assessed pending resolution. Since the act grants the consumer error resolution rights, the creditor should avoid any chilling effect on the good faith assertion of errors that might result if charges are assessed when no billing error has occurred.

13(a) Definition of billing error.

1. *Actual, implied, or apparent authority.* Whether use of a credit card or open-end credit plan is authorized is determined by state or other applicable law.

Paragraph 13(a)(3).

1. *Coverage.* Section 226.13(a)(3) covers disputes about goods or services that are "not accepted" or "not delivered . . . as agreed"; for example:

- The appearance on a periodic statement of a purchase, when the consumer refused to take delivery of goods because they did not comply with the contract.
- Delivery of property or services different from that agreed upon.
- Delivery of the wrong quantity.
- Late delivery.
- Delivery to the wrong location.

Section 226.13(a)(3) does not apply to a dispute relating to the quality of property or services that the consumer accepts. Whether acceptance occurred is determined by state or other applicable law.

Paragraph 13(a)(5).

1. *Computational errors.* In periodic statements that are combined with other information, the error resolution procedures are triggered only if the consumer asserts a computational billing error in the credit-related portion of the periodic statement. For example:

- If a bank combines a periodic statement reflecting the consumer's credit card transactions with the consumer's monthly checking statement, a computational error in the checking account portion of the combined statement is not a billing error.

Paragraph 13(a)(6).

1. *Documentation requests.* A request for documentation such as receipts or sales slips, unaccompanied by an allegation of an error under § 226.13(a) or a request for additional clarification under § 226.13(a)(6), does not trigger the error resolution procedures. For example, a request for documentation merely for purposes such as tax preparation or recordkeeping does not trigger the error resolution procedures.

13(b) Billing error notice.

1. *Withdrawal.* The consumer's withdrawal of a billing error notice may be oral or written.

Paragraph 13(b)(1).

1. *Failure to send periodic statement—timing.* If the creditor has failed to send a periodic statement, the 60-day period runs from the time the statement should have been sent. Once the statement is provided, the consumer has another 60 days to assert any billing errors reflected on it.

2. *Failure to reflect credit—timing.* If the periodic statement fails to reflect a credit to the account, the 60-day period runs from

transmittal of the statement on which the credit should have appeared.

3. *Transmittal.* If a consumer has arranged for periodic statements to be held at the financial institution until called for, the statement is "transmitted" when it is first made available to the consumer.

Paragraph 13(b)(2).

1. *Identity of the consumer.* The billing error notice need not specify both the name and the account number if the information supplied enables the creditor to identify the consumer's name and account.

13(c) Time for resolution; general procedures.

1. *Temporary or provisional corrections.* A creditor may temporarily correct the consumer's account in response to a billing error notice, but is not excused from complying with the remaining error resolution procedures within the time limits for resolution.

2. *Correction without investigation.* A creditor may correct a billing error in the manner and amount asserted by the consumer without the investigation or the determination normally required. The creditor must comply, however, with all other applicable provisions. If a creditor follows this procedure, no presumption is created that a billing error occurred.

Paragraph 13(c)(2).

1. *Time for resolution.* The phrase "two complete billing cycles" means 2 actual billing cycles occurring after receipt of the billing error notice, not a measure of time equal to 2 billing cycles. For example, if a creditor on a monthly billing cycle receives a billing error notice mid-cycle, it has the remainder of that cycle plus the next 2 full billing cycles to resolve the error.

13(d) Rules pending resolution.

1. *Disputed amount.* "Disputed amount" is the dollar amount alleged by the consumer to be in error. When the allegation concerns the description or identification of the transaction (such as the date or the seller's name) rather than a dollar amount, the disputed amount is the amount of the transaction or charge that corresponds to the disputed transaction identification. If the consumer alleges a failure to send a periodic statement under § 226.13(a)(7),the disputed amount is the entire balance owing.

13(d)(1) Consumer's right to withhold disputed amount; collection action prohibited.

1. *Prohibited collection actions.* During the error resolution period, the creditor is prohibited from trying to collect the disputed amount from the consumer. Prohibited collection actions include, for example, instituting court action, taking a lien, or instituting attachment proceedings.

2. *Right to withhold payment.* If the creditor reflects any disputed amount or related finance or other charges on the periodic statement, and is therefore required to make the disclosure under footnote 30, the creditor may comply with that disclosure requirement by indicating that payment of any disputed amount is not required pending resolution. Making a disclosure that only refers to the disputed amount would, of course, in no way affect the consumer's right under § 226.13(d)(1) to withhold related finance and other charges. The disclosure under footnote 30 need not appear in any specific place on the periodic statement, need not state the specific amount that the consumer may withhold, and may be preprinted on the periodic statement.

3. *Imposition of additional charges on undisputed amounts.* The consumer's withholding of a disputed amount from the total bill cannot subject undisputed balances (including new purchases or cash advances made during the present or subsequent cycles) to the imposition of finance or other charges. For example, if on an account with a free-ride period (that is, an account in which paying the new balance in full allows the consumer to avoid the imposition of additional finance charges), a consumer disputes a $2 item out of a total bill of $300 and pays $298 within the free-ride period, the consumer would not lose the free-ride as to any undisputed amounts, even if the creditor determines later that no billing error occurred. Furthermore, finance or other charges may not be imposed on any new purchases or advances that, absent the unpaid disputed balance, would not have finance or other charges imposed on them. Finance or other charges that would have been incurred even if the consumer had paid the disputed amount would not be affected.

4. *Automatic payment plans—coverage.* The coverage of this provision is limited to the card issuer's intra-institutional payment plans. It does not apply to:

- Inter-institutional payment plans that permit a cardholder to pay automatically any credit card indebtedness from an asset account not held by the card issuer receiving payment.
- Intra-institutional automatic payment plans offered by financial institutions that are not credit card issuers.

5. *Automatic payment plans—time of notice.* While the card issuer does not have to restore or prevent the debiting of a disputed amount if the billing error notice arrives after the 3-business-day cut-off, the card issuer must, however, prevent the automatic debit of any part of the disputed amount that is still outstanding and unresolved at the time of the next scheduled debit date.

13(d)(2) Adverse credit reports prohibited.

1. *Report of dispute.* Although the creditor must not issue an adverse credit report

because the consumer fails to pay the disputed amount or any related charges, the creditor may report that the amount or the account is in dispute. Also, the creditor may report the account as delinquent if undisputed amounts remain unpaid.

2. *"Person."* During the error resolution period, the creditor is prohibited from making an adverse credit report about the disputed amount to any person—including employers, insurance companies, other creditors, and credit bureaus.

3. *Creditor's agent.* Whether an agency relationship exists between a creditor and an issuer of an adverse credit report is determined by State or other applicable law.

13(e) Procedures if billing error occurred as asserted.

1. *Correction of error.* The phrase "as applicable" means that the necessary corrections vary with the type of billing error that occurred. For example, a misidentified transaction (or a transaction that is identified by one of the alternative methods in § 226.8) is cured by properly identifying the transaction and crediting related finance and any other charges imposed. The creditor is not required to cancel the amount of the underlying obligation incurred by the consumer.

2. *Form of correction notice.* The written correction notice may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the periodic statement is used, the amount of the billing error must be specifically identified.

If a separate billing error correction notice is provided, the accompanying or subsequent periodic statement reflecting the corrected amount may simply identify it as "credit."

13(f) Procedures if different billing error or no billing error occurred.

1. *Different billing error.* Examples of a "different billing error" include:

- Differences in the amount of an error (for example, the customer asserts a $55.00 error but the error was only $53.00).
- Differences in other particulars asserted by the consumer (such as when a consumer asserts that a particular transaction never occurred, but the creditor determines that only the seller's name was disclosed incorrectly).

2. *Form of creditor's explanation.* The written explanation (which also may notify the consumer of corrections to the account) may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the creditor uses the periodic statement for the explanation and correction(s), the corrections must be specifically identified. If a separate explanation, including the correction notice, is provided, the enclosed or subsequent periodic statement reflecting the corrected amount may simply identify it as a "credit." The explanation may be combined with the creditor's notice to the consumer of amounts still owing, which is required under § 226.13(g)(1), provided it is sent within the time limit for resolution. (See Commentary to § 226.13(e).)

13(g) Creditor's rights and duties after resolution.

Paragraph 13(g)(1).

1. *Amounts owed by consumer.* Amounts the consumer still owes may include both minimum periodic payments and related finance and other charges that accrued during the resolution period. As explained in the commentary to § 226.13(d)(1), even if the creditor later determines that no billing error occurred, the creditor may not include finance or other charges that are imposed on undisputed balances solely as a result of a consumer's withholding payment of a disputed amount.

2. *Time of notice.* The creditor need not send the notice of amount owed within the time period for resolution, although it is under a duty to send the notice promptly after resolution of the alleged error. If the creditor combines the notice of the amount owed with the explanation required under § 226.13(f)(1), the combined notice must be provided within the time limit for resolution.

Paragraph 13(g)(2).

1. The creditor need not allow any free-ride period disclosed under §§ 226.6(a)(1) and 226.7(j) to pay the amount due under § 226.13(g)(1) if no error occurred and the consumer was not entitled to a free-ride period at the time the consumer asserted the error.

Paragraph 13(g)(3).

1. *Time for payment.* The consumer has a minimum of 10 days to pay (measured from the time the consumer could reasonably be expected to have received notice of the amount owed) before the creditor may issue an adverse credit report; if an initially disclosed free-ride period allows the consumer a longer time in which to pay, the consumer has the benefit of that longer period.

Paragraph 13(g)(4).

1. *Credit reporting.* Under § 226.13(g)(4)(i) and (iii) the creditor's additional credit reporting responsibilities must be accomplished promptly. The creditor need not establish costly procedures to fulfill this requirement. For example, a creditor that reports to a credit bureau on scheduled updates need not transmit corrective information by an unscheduled computer or magnetic tape; it may provide the credit bureau with the correct information by letter or other commercially reasonable means when

using the scheduled update would not be "prompt." The creditor is not responsible for ensuring that the credit bureau corrects its information immediately.

2. *Adverse report to credit bureau.* If a creditor made an adverse report to a credit bureau that disseminated the information to other creditors, the creditor fulfills its § 226.13(g)(4)(ii) obligations by providing the consumer with the name and address of the credit bureau.

13(i) Relation to Electronic Fund Transfer Act and Regulation E.

1. *Coverage.* Credit extended directly from a non-overdraft credit line is governed solely by Regulation Z, even though a combined credit card/access device is used to obtain the extension.

2. *Incidental credit under agreement.* Credit extended incident to an electronic fund transfer under an agreement between the consumer and the financial institution is governed by § 226.13(i), which provides that certain error resolution procedures in both this regulation and Regulation E apply. Incidental credit that is not extended under an agreement between the consumer and the financial institution is governed *solely* by the error resolution procedures in Regulation E. For example:

- Credit inadvertently extended incident to an electronic fund transfer is governed solely by the Regulation E error resolution procedures, if the bank and the consumer do not have an agreement to extend credit when the consumer's account is overdrawn.

3. *Application to debit/credit transactions—examples.* If a consumer withdraws money at an automated teller machine and activates an overdraft credit feature on the checking account:

- An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E provisions (such as timing and notice) for the entire transaction.
- The creditor need not provisionally credit the consumer's account, under § 205.11(c)(2)(i) of Regulation E, for any portion of the unpaid extension of credit.
- The creditor must credit the consumer's account under § 205.11(e) with any finance or other charges incurred as a result of the alleged error.
- The provisions of § 226.13 (d) and (g) apply only to the credit portion of the transaction.

References

Statute: Sections 161 and 162.

Other sections: Sections 226.6 through 226.8.

Other regulations: Regulation E (12 CFR 205).

Previous regulation: Sections 226.2(j) and (cc), and 226.14.

1981 changes: Section 226.13 reflects several substantive changes from the previous regulation and a complete restructuring of the error resolution provisions. The new organization, for example, arranges the creditor's responsibilities in chronological sequence.

Section 226.13(a)(7) implements amended § 161(b) of the act, and provides that the creditor's failure to send a periodic statement to the consumer's current address is a billing error, unless the creditor received written notice of the address change fewer than 20 days (instead of 10 days) before the end of the billing cycle.

Several provisions regarding the creditor's duties after a billing error is alleged have been revised. The previous regulation immunized a creditor from liability for inadvertently taking collection action or making an adverse credit report within 2 days after receiving a billing error notice; these provisions are deleted from the revised regulation. The revised regulation no longer requires placement "on the face" of the periodic statment of the disclosure about payment of disputed amounts.

The revised regulation changes the rule in the previous regulation that a card issuer must prevent or restore an automatic debit of a disputed amount if it receives a billing error notice within 16 days after transmitting the periodic statement that reflects the alleged error. Under the revised regulation, the card issuer must prevent an automatic debit if it receives a billing error notice up to 3 days before the scheduled payment date (provided that the notice is received within the 60 days for the consumer to assert the error).

Section 226.14—Determination of Annual Percentage Rate

14(a) General rule.

1. *Tolerance.* The tolerance of ⅛ of 1 percentage point above or below the annual percentage rate applies to any required disclosure of the annual percentage rate. The disclosure of the annual percentage rate is required in §§ 226.6, 226.7, 226.9, 226.15, 226.16, and 226.26.

2. *Rounding.* The regulation does not require that the annual percentage rate be calculated to any particular number of decimal places; rounding is permissible within the ⅛ of 1 percent tolerance. For example, an exact annual percentage rate of 14.33333% may be stated as 14.33% or as 14.3%, or even as 14⅓%; but it could not be stated as 14.2% or 14%, since each varies by more than the permitted tolerance.

3. *Periodic rates.* No explicit tolerance exists for any periodic rate as such; a disclosed periodic rate may vary from precise accuracy (for example, due to rounding) only to the extent that its annualized equiv-

alent is within the tolerance permitted by § 226.14(a). Further, a periodic rate need not be calculated to any particular number of decimal places.

4. *Finance charges.* The regulation does not prohibit creditors from assessing finance charges on balances that include prior, unpaid finance charges; state or other applicable law may do so, however.

5. *Good faith reliance on faulty calculation tools.* Footnote 31a absolves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the footnote is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

14(b) Annual percentage rate for initial disclosures and for advertising purposes.

1. *Corresponding annual percentage rate computation.* For initial disclosures (under § 226.6) and for advertising (under § 226.16), the annual percentage rate is determined by multiplying the periodic rate by the number of periods in the year. This computation reflects the fact that, in such disclosures, the rate (known as the corresponding annual percentage rate) is prospective and does not involve any particular finance charge or periodic balance. This computation also is used to determine any annual percentage rate for oral disclosures under § 226.26(a).

14(c) Annual percentage rate for periodic statements.

1. *General rule.* Section 226.14(c) requires disclosure of the corresponding annual percentage rate for each periodic rate (under § 226.7(d)). It is figured by multiplying each periodic rate by the number of periods per year. This disclosure is like that provided on the initial disclosure statement. The periodic statement also must reflect (under § 226.7(g)) the annualized equivalent of the rate actually applied during a particular cycle (the historical rate); this rate may differ from the corresponding annual percentage rate because of the inclusion of fixed, minimum, or transaction charges. Sections 226.14 (c)(1) through (c)(4) state the computation rules for the historical rate.

2. *Periodic rates.* Section 226.14(c)(1) applies if the only finance charge imposed is due to the application of a periodic rate to a balance. The creditor may compute the annual percentage rate either:

- By multiplying each periodic rate by the number of periods in the year; or
- By the "quotient" method. This method refers to a composite annual percentage rate when different periodic rates apply to different balances. For example, a particular plan may involve a periodic rate of 1½% on balances up to $500, and 1% on balances over $500. If, in a given cycle, the consumer has a balance of $800, the finance charge would consist of $7.50 (500×.015) plus $3.00 (300×.01), for a total finance charge of $10.50. The annual percentage rate for this period may be disclosed either as 18% on $500 and 12% on $300, or as 15.75% on a balance of $800 (the quotient of $10.50 divided by $800, multiplied by 12).

3. *Charges not based on periodic rates.* Section 226.14(c)(2) applies if the finance charge imposed includes a charge not due to the application of a periodic rate (other than a charge relating to a specific transaction). For example, if the creditor imposes a minimum $1 finance charge on all balances below $50, and the consumer's balance was $40 in a particular cycle, the creditor would disclose an annual percentage rate of 30% (1/40×12).

4. *No balance.* Footnote 32 to § 226.14(c)(2) would apply not only when minimum charges are imposed on an account with no balance, but also to a plan in which a periodic rate is applied to advances from the date of the transaction. For example, if on May 19 the consumer pays the new balance in full from a statement dated May 1, and has no further transactions reflected on the June 1 statement, that statement would reflect a finance charge with no account balance.

5. *Transaction charges.* Section 226.14(c)(3) transaction charges include, for example:

- A loan fee of $10 imposed on a particular advance.
- A charge of 3% of the amount of each transaction.

The reference to avoiding duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances *and* in the "other amounts on which a finance charge was imposed" figure. For further explanation and examples of how to determine the components of this formula, see Appendix F.

6. *Daily rate with specific transaction charge.* Section 226.14(c)(3) sets forth an acceptable method for calculating the annual percentage rate if the finance charge results from a charge relating to a specific transac-

tion and the application of a daily periodic rate. This section includes the requirement that the creditor follow the rules in Appendix F in calculating the annual percentage rate, especially footnote 1 to Appendix F which addresses the daily rate/transaction charge situation by providing that the "average of daily balances" shall be used instead of the "sum of the balances."

7. *Charges related to opening account.* Footnote 33 is applicable to § 226.14(c)(2) and (c)(3). The charges involved here do not relate to a specific transaction or to activity on the account, but relate solely to the opening of the account. Inclusion of these charges in the annual percentage rate calculation results in significant distortions of the annual percentage rate and delivery of a possibly misleading disclosure to consumers. The rule in footnote 33 applies even if the loan fee, points, or similar charges are billed on a subsequent periodic statement or withheld from the proceeds of the first advance on the account.

8. *Classification of charges.* If the finance charge includes a charge not due to the application of a periodic rate, the creditor must determine the proper annual percentage rate computation method according to the type of charge imposed. If the charge is tied to a specific transaction (for example, 3% of the amount of each transaction), then the method in § 226.14(c)(3) must be used. If a fixed or minimum charge is applied, that is, one not tied to any specific transaction, then the formula in § 226.14(c)(2) is appropriate.

9. *Small finance charges.* Section 226.14(c)(4) gives the creditor an alternative to § 226.14(c)(2) and (c)(3) if small finance charges (50 cents or less) are involved; that is, if the finance charge includes minimum or fixed fees not due to the application of a periodic rate and the total finance charge for the cycle does not exceed 50 cents. For example, while a monthly activity fee of 50 cents on a balance of $20 would produce an annual percentage rate of 30 percent under the rule in § 226.14(c)(2), the creditor may disclose an annual percentage rate of 18 percent if the periodic rate generally applicable to all balances is 1½ percent per month. This option is consistent with the provision in footnote 11 to §§ 226.6 and 226.7 permitting the creditor to disregard the effect of minimum charges in disclosing the ranges of balances to which periodic rates apply.

14(d) Calculations where daily periodic rate applied.

1. *Quotient Method.* Section 226.14(d) addresses use of a daily periodic rate(s) to determine some or all of the finance charge and use of the quotient method to determine the annual percentage rate. Since the quotient formula in § 226.14(c)(1)(ii) does not work when a daily rate is being applied to a series of daily balances, § 226.14(d) gives the creditor 2 alternative ways to figure the annual percentage rate—either of which satisfies the requirement in § 226.7(g).

2. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)-6 for guidance on an appropriate calculation method.

References

Statute: Section 107.

Other sections: Sections 226.6, 226.7, 226.9, 226.15, 226.16, and 226.26.

Previous regulation: Section 226.5(a) and Interpretation §§ 226.501 and 226.506.

1981 changes: Section 226.14 reflects the statutory amendment permitting a ⅛ of 1 percent tolerance for annual percentage rates. The revised regulation no longer reflects the provision dealing with finance charges imposed on specified ranges or brackets of balances. The revised regulation includes a footnote providing that loan fees, points, or similar charges unrelated to any specific transaction are not figured into the annual percentage rate computation.

Section 226.15—Right of Rescission

1. *Transactions not covered.* Credit extensions that are not subject to the regulation are not covered by § 226.15 even if the customer's principal dwelling is the collateral securing the credit. For this purpose, "credit extensions" also would include the occurrences listed in Comment 15(a)(1)-1. For example, the right of rescission does not apply to the opening of a business-purpose credit line, even though the loan is secured by the customer's principal dwelling.

15(a) Consumer's right to rescind.

Paragraph 15(a)(1).

1. *Occurrences subject to right.* Under an open-end credit plan secured by the consumer's principal dwelling, the right of rescission generally arises with each of the following occurrences:

- Opening the account.
- Each credit extension.
- Increasing the credit limit.
- Adding to an existing account a security interest in the consumer's principal dwelling.
- Increasing the dollar amount of the security interest taken in the dwelling to secure the plan. For example, a consumer may open an account with a $10,000 credit limit, $5,000 of which is initially secured by the consumer's principal dwelling. The consumer has the right to rescind at that time and (except as noted in § 226.15(a)(1)(ii)) with each extension on the account. Later, if the creditor decides that it wants the credit line fully secured, and increases the amount of its interest in the consumer's

dwelling, the consumer has the right to rescind the increase.

2. *Exceptions.* Although the consumer generally has the right to rescind with each transaction on the account, section 125(e) of the Act provides an exception: the creditor need not provide the right to rescind at the time of each credit extension made under an open-end credit plan secured by the consumer's principal dwelling to the extent that the credit extended is in accordance with a previously established credit limit for the plan. This limited rescission option is available whether or not the plan existed prior to the effective date of the Act.

3. *Security interest arising from transaction.* In order for the right of rescission to apply, the security interest must be retained as part of the credit transaction. For example:

- A security interest that is acquired by a contractor who is also extending the credit in the transaction.
- A mechanic's or materialman's lien that is retained by a subcontractor or supplier of a contractor-creditor, even when the latter has waived its own security interest in the consumer's home.

The security interest is not part of the credit transaction, and therefore the transaction is not subject to the right of rescission when, for example:

- A mechanic's or materialman's lien is obtained by a contractor who is not a party to the credit transaction but merely is paid with the proceeds of the consumer's cash advance.
- All security interests that may arise in connection with the credit transaction are validly waived.
- The creditor obtains a lien and completion bond that in effect satisfies all liens against the consumer's principal dwelling as a result of the credit transaction.

Although liens arising by operation of law are not considered security interests for purposes of disclosure under § 226.2, that section specifically includes them in the definition for purposes of the right of rescission. Thus, even though an interest in the consumer's principal dwelling is not a required disclosure under § 226.6(c), it may still give rise to the right of rescission.

4. *Consumer.* To be a consumer within the meaning of § 226.2, that person must at least have an ownership interest in the dwelling that is encumbered by the creditor's security interest, although that person need not be a signatory to the credit agreement. For example, if only one spouse enters into a secured plan, the other spouse is a consumer if the ownership interest of that spouse is subject to the security interest.

5. *Principal dwelling.* A consumer can only have *one* principal dwelling at a time. A vacation or other second home would not be a principal dwelling. A transaction secured by a second home (such as a vacation home) that is not currently being used as the consumer's principal dwelling is not rescindable, even if the consumer intends to reside there in the future. When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling when it secures the open-end credit line. Dwelling, as defined in § 226.2, includes structures that are classified as personalty under state law. For example, a transaction secured by a mobile home, trailer, or houseboat used as the consumer's principal dwelling may be rescindable.

6. *Special rule for principal dwelling.* When the consumer is acquiring or constructing a new principal dwelling, *any* credit plan or extension secured by the equity in the consumer's current principal dwelling (for example, an advance to be used as a bridge loan) is still subject to the right of rescission.

Paragraph 15(a)(2).

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing, but not necessarily on the notice supplied under § 226.15(b). Whatever the means of sending the notification of rescission—mail, telegram, or other written means—the time period for the creditor's performance under § 226.15(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.15(b).

Paragraph 15 (a)(3).

1. *Rescission period.* the period within which the consumer may exercise the right to rescind runs for 3 business days from the last of 3 events:

- The occurrence that gives rise to the right of rescission.
- Delivery of *all* material disclosures that are relevant to the plan.
- Delivery to the consumer of the required rescission notice.

For example, an account is opened on Friday, June 1, and the disclosures and notice of the right to rescind were given on Thursday, May 31; the rescission period will expire at midnight of the third business day after June 1—that is, Tuesday June 5. In another example, if the disclosures are given and the account is opened on Friday, June 1, and the rescission notice is given on Monday, June 4, the rescission period expires at midnight of the third business day after June 4—that is Thursday, June 7. The consumer must place the rescission notice in the mail, file it for telegraphic transmission, or deliver it to the creditor's place of business within that period in order to exercise the right.

2. *Material disclosures.* Footnote 36 sets forth the material disclosures that must be provided before the rescission period can begin to run. The creditor must provide sufficient information to satisfy the requirements of § 226.6 for these disclosures. A creditor may satisfy this requirement by giving an initial disclosure statement that complies with the regulation. Failure to give the other required initial disclosures (such as the billing rights statement) does not prevent the running of the rescission period, although that failure may result in civil liability or administrative sanctions.

3. *Material disclosures—variable rate program.* For a variable rate program, the material disclosures also include the disclosures listed in footnote 12 to § 226.6(a)(2): the circumstances under which the rate may increase; the limitations on the increase; and the effect of an increase.

4. *Unexpired right of rescission.* When the creditor has failed to take the action necessary to start the three-day rescission period running the right to rescind automatically lapses on the occurrence of the earliest of the following three events:

- The expiration of three years after the occurrence giving rise to the right of rescission
- Transfer of all the consumer's interest in the property
- Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title through a device such as an installment sale contract

Transfer of all the consumer's interest includes such transfers as bequests and gifts. A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of § 226.15. A partial transfer of the consumer's interest, such as a transfer bestowing co-ownership on a spouse, does not terminate the right of rescission.

Paragraph 15(a)(4).

1. *Joint owners.* When more than one consumer has the right to rescind a transaction, any one of them may exercise that right and cancel the transaction on behalf of all. For example, if both a husband and wife have the right to rescind a transaction, either spouse acting alone may exercise the right and both are bound by the rescission.

15(b) Notice of right to rescind.

1. *Who receives notice.* Each consumer entitled to rescind must be given:

- Two copies of the rescission notice.
- The material disclosures.

In a transaction involving joint owners, both of the whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive 2 copies of the rescission notice and one copy of the disclosures.

2. *Format.* The rescission notice may be physically separated from the material disclosures or combined with the material disclosures, so long as the information required to be included on the notice is set forth in a clear and conspicuous manner. See the model notices in Appendix G.

3. *Content.* The notice must include all of the information outlined in § 226.15(b)(1) through (5). The requirement in § 226.15(b) that the transaction or occurrence be identified may be met by providing the date of the transaction or occurrence. The notice may include additional information related to the required information, such as:

- A description of the property subject to the security interest.
- A statement that joint owners may have the right to rescind and that a rescission by one is effective for all.
- The name and address of an agent of the creditor to receive notice of rescission.

4. *Time of providing notice.* The notice required by § 226.15(b) need not be given before the occurrence giving rise to the right of rescission. The creditor may deliver the notice after the occurrence, but the rescission period will not begin to run until the notice is given. For example, if the creditor provides the notice on May 15, but disclosures were given and the credit limit was raised on May 10, the 3-business-day rescission period will run from May 15.

15(c) Delay of creditor's performance.

1. *General rule.* Until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, the creditor must not, either directly or through a third party:

- Disburse advances to the consumer.
- Begin performing services for the consumer.
- Deliver materials to the consumer.

2. *Escrow.* The creditor may disburse advances during the rescission period in a valid escrow arrangement. The creditor may not, however, appoint the consumer as "trustee" or "escrow agent" and distribute

funds to the consumer in that capacity during the delay period.

3. *Permissible actions.* Section 226.15(c) does not prevent the creditor from taking other steps during the delay, short of beginning actual performance. The creditor may, for example:

- Prepare the cash advance check.
- Perfect the security interest.
- Accrue finance charges during the delay period.

4. *Performance by third party.* The creditor is relieved from liability for failure to delay performance if a third party with no knowledge that the rescission right has been activated provides materials or services, as long as any debt incurred for materials or services obtained by the consumer during the rescission period is not secured by the security interest in the consumer's dwelling. For example, if a consumer uses a bank credit card to purchase materials from a merchant in an amount below the floor limit, the merchant might not contact the card issuer for authorization and therefore would not know that materials should not be provided.

5. *Delay beyond rescission period.* The creditor must wait until it is reasonably satisfied that the consumer has not rescinded. For example, the creditor may satisfy itself by doing one of the following:

- Waiting a reasonable time after expiration of the rescission period to allow for delivery of a mailed notice.
- Obtaining a written statement from the consumer that the right has not been exercised.

When more than one consumer has the right to rescind, the creditor cannot reasonably rely on the assurance of only one consumer, because other consumers may exercise the right.

15(d) Effects of rescission.

Paragraph 15(d)(1).

1. *Termination of security interest.* Any security interest giving rise to the right of rescission becomes void when the consumer exercises the right of rescission. The security interest is automatically negated, regardless of its status and whether or not it was recorded or perfected. Under § 226.15(d)(2), however, the creditor must take any action necessary to reflect the fact that the security interest no longer exists.

2. *Extent of termination.* The creditor's security interest is void to the extent that it is related to the occurrence giving rise to the right of rescission. For example, upon rescission:

- If the consumer's right to rescind is activated by the opening of a plan, any security interest in the principal dwelling is void.
- If the right arises due to an increase in the credit limit, the security interest is void as to the amount of credit extensions over the prior limit, but the security interest in amounts up to the original credit limit is unaffected.
- If the right arises with each individual credit extension, then the interest is void as to that extension, and other extensions are unaffected.

Paragraph 15(d)(2).

1. *Refunds to consumer.* The consumer cannot be required to pay any amount in the form of money or property either to the creditor or to a third party as part of the occurrence subject to the right of rescission. Any amounts of this nature already paid by the consumer must be refunded. "Any amount" includes finance charges already accrued, as well as other charges such as application and commitment fees or fees for a title search or appraisal, whether paid to the creditor, paid directly to a third party, or passed on from the creditor to the third party. It is irrelevant that these amounts may not represent profit to the creditor. For example:

- If the occurrence is the opening of the plan, the creditor must return any membership or application fee paid.
- If the occurrence is the increase in a credit limit or the addition of a security interest, the creditor must return any fee imposed for a new credit report or filing fees.
- If the occurrence is a credit extension, the creditors must return fees such as application, title, and appraisal or survey fees, as well as any finance charges related to the credit extension.

2. *Amounts not refundable to consumer.* Creditors need not return any money given by the consumer to a third party outside of the occurrence, such as costs incurred for a building permit or for a zoning variance. Similarly, the term "any amount" does not apply to money or property given by the creditor to the consumer; those amounts must be tendered by the consumer to the creditor under § 226.15(d)(3).

3. *Reflection of security interest termination.* The creditor must take whatever steps are necessary to indicate that the security interest is terminated. Those steps include the cancellation of documents creating the security interest, and the filing of release or termination statements in the public record. In a transaction involving subcontractors or suppliers that also hold security interests related to the occurrence rescinded by the consumer, the creditor must insure that the termination of their security interests is also reflected. The 20-day period for the creditor's action refers to the time within which the creditor must begin the process. It does not require all necessary steps to have been completed within that time, but the creditor is responsible for seeing the process through to completion.

Paragraph 15(d)(3).

1. *Property exchange.* Once the creditor has fulfilled its obligation under § 226.15(d)(2), the consumer must tender to the creditor any property or money the creditor has already delivered to the consumer. At the consumer's option, property may be tendered at the location of the property. For example, if fixtures or furniture have been delivered to the consumer's home, the consumer may tender them to the creditor by making them available for pick-up at the home, rather than physically returning them to the creditor's premises. Money already given to the consumer *must* be tendered at the creditor's place of business. For purpose of property exchange, the following additional rules apply:

- A cash advance is considered money for purposes of this section even if the creditor knows what the consumer intends to purchase with the money.
- In a 3-party open-end credit plan (that is, if the creditor and seller are not the same or related persons), extensions by the creditor that are used by the consumer for purchases from third-party sellers are considered to be the same as cash advances for purposes of tendering value to the creditor, even though the transaction is a purchase for other purposes under the regulation. For example, if a consumer exercises the unexpired right to rescind after using a 3-party credit card for one year, the consumer would tender the amount of the purchase price for the items charged to the account, rather than tendering the items themselves to the creditor.

2. *Reasonable value.* If returning the property would be extremely burdensome to the consumer, the consumer may offer the creditor its reasonable value rather than returning the property itself. For example, if building materials have already been incorporated into the consumer's dwelling, the consumer may pay their reasonable value.

Paragraph 15(d)(4).

1. *Modifications.* The procedures outlined in § 226.15(d)(2) and (d)(3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made.

15(e) Consumer's waiver of right to rescind.

1. *Need for waiver.* To waive the right to rescind, the consumer must have a bona fide personal financial emergency that must be met before the end of the rescission period. The existence of the consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the right of rescission.

2. *Procedure.* To waive or modify the right to rescind, the consumer must give a written statement that specifically waives or modifies the right, and also includes a brief description of the emergency. Each consumer entitled to rescind must sign the waiver statement. In a transaction involving multiple consumers, such as a husband and wife using their home as collateral, the waiver must bear the signatures of both spouses.

15(f) Exempt transactions.

1. *Residential mortgage transaction.* Although residential mortgage transactions would seldom be made on bona fide open-end credit plans (under which repeated transactions must be reasonably contemplated), an advance on an open-end plan could be for a downpayment for the purchase of a dwelling that would then secure the remainder of the line. In such a case, only the particular advance for the downpayment would be exempt from the rescission right.

2. *State creditors.* Cities and other political subdivisions of states acting as creditors are not exempt from § 226.15.

3. *Spreader clause.* When the creditor holds a mortgage or deed of trust on the consumer's principal dwelling and that mortgage or deed of trust contains a "spreader clause" (also known as a "dragnet" or cross-collateralization clause), subsequent occurrences such as the opening of a plan or individual credit extensions are subject to the right of rescission to the same degree as if the security interest were taken directly to secure the open-end plan, unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent open-end credit extensions.

References

Statute: Sections 113, 125, 130, and the Housing and Community Development Technical Amendments Act of 1984, Sec. 205 (Pub. L. 98-479).

Other sections: Section 226.2 and Appendix G.

Previous regulation: Section 226.9.

1981 Changes: Section 226.15 reflects the statutory amendments of 1980, providing for a limited right of rescission when individual credit extensions are made in accordance with a previously established credit limit for an open-end credit plan. The 1980 amendments provided that this limited rescission right be available for a three-year trial period. However, Pub. L. 98-479 now permanently exempts such individual credit extensions from the right of rescission.

The right to rescind applies not only to real property used as the consumer's principal dwelling, but to personal property as well. The regulation provides no specific text or format for the rescission notice.

When a consumer exercises the right to rescind, the creditor now has 20 days to return a consumer's money or property and take the necessary action to terminate the security interest. The creditor has 20 days to take possession of the money or property after the consumer's tender before the consumer may keep it without further obligation.

Under the revised regulation, the waiver provision has been relaxed. The lien status of the mortgage is irrelevant for purposes of the residential mortgage transaction exemption. The exemption for agricultural loans from the right to rescind has been deleted.

Section 226.16—Advertising

1. *Clear and conspicuous standard.* Section 226.16 is subject to the general "clear and conspicuous" standard for Subpart B (see § 226.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.

2. *Expressing the annual percentage rate in abbreviated form.* Whenever the annual percentage rate is used in an advertisement for open-end credit, it may be expressed using a readily understandable abbreviation such as "APR".

16(a) Actually available terms.

1. *General rule.* To the extent that an advertisement mentions specific credit terms, it may state only those terms that the creditor is actually prepared to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. Section 226.16(a) is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available. For example, a creditor may advertise terms that will be offered for only a limited period, or terms that will become available at a future date.

2. *Specific credit terms.* "Specific credit terms" is not limited to the disclosures required by the regulation but would include any specific components of a credit plan, such as the minimum periodic payment amount or seller's points in a plan secured by real estate.

16(b) Advertisement of terms that require additional disclosures.

1. *Use of positive terms.* An advertisement must state a credit term as a positive number in order to trigger additional disclosures. For example, "no annual membership fee" would not trigger the additional disclosures required by § 226.16(b).

2. *Implicit terms.* Section 226.16(b) applies even if the triggering term is not stated explicitly, but may be readily determined from the advertisement. For example, a statement that "the equity in your home becomes spendable with an XYZ line of credit" implicitly states that the creditor will take a security interest in the consumer's home.

3. *Membership fees.* A membership fee is not a triggering term nor need it be disclosed under § 226.16(b)(3) if it is required for participation in the plan whether or not an open-end credit feature is attached. (See Comment 6(b)-1.)

4. *Variable-rate plans.* In disclosing the annual percentage rate in an advertisement for a variable-rate plan, as required by § 226.16(b)(2), the creditor may use an insert showing the current rate; may give the rate as of a specified recent date; or may disclose an estimated rate under § 226.5(c). The additional requirement in § 226.16(b)(2) to disclose the variable-rate feature may be satisfied by disclosing that "the annual percentage rate may vary" or a similar statement, but the advertisement need not include the information required by footnote 12 to § 226.6(a)(2).

5. *Discounted variable-rate plans—disclosure of the annual percentage rates.* The advertised annual percentage rates for discounted variable-rate plans must, in accordance with comment 6(a)(2)-10, include both the initial rate (with the statement of how long it will remain in effect) and the current indexed rate (with the statement that this second rate may vary). The options listed in comment 16(b)-4 may be used in disclosing the current indexed rate.

6. *Triggering terms.* The following are examples of terms that trigger additional disclosures:

- "Small monthly service charge on the remaining balance."
- "12 percent Annual Percentage Rate."
- "A $15 annual membership fee buys you $2,000 in credit."

7. *Minimum, fixed, transaction, activity, or similar charge.* The charges to be disclosed under § 226.16(b)(1) are those that are considered finance charges under § 226.4.

16(c) Catalogs and multiple-page advertisements.

1. *Definition.* The multiple-page advertisements to which § 226.16(c) refers are advertisements consisting of a series of sequentially numbered pages—for example, a supplement to a newspaper. A mailing consisting of several separate flyers or pieces of promotional material in a single envelope does not constitute a single multiple-page advertisement for purposes of § 226.16(c).

Paragraph 16(c)(1).

1. *General.* Section 226.16(c)(1) permits creditors to put credit information together in one place in a catalog or multiple-page advertisement. The rule applies only if the catalog or multiple-page advertisement contains one or more of the triggering terms from § 226.16(b).

Paragraph 16(c)(2).

1. *Table or schedule if credit terms depend on outstanding balance.* If the credit terms of a plan vary depending on the amount of the balance outstanding, rather than the amount of any property purchased, a table or schedule complies with § 226.16(c)(2) if it includes the required disclosures for representative balances. For example, a creditor would disclose that a periodic rate of 1.5% is applied to balances of $500 or less, and a 1% rate is applied to balances greater than $500.

References

Statute: Sections 141 and 143.

Previous regulation: Section 226.10 (a) through (c) and Interpretation § 226.1002.

Other sections: Sections 226.2 and 226.6.

1981 changes: Section 226.16 reflects the statutory changes to section 143 of the act which reduce both the number of triggering terms and the additional disclosures required by the use of those terms. Membership or participation fees are included among the additional disclosures required when a triggering term is used. The substance of Interpretation § 226.1002, requiring disclosure of representative amounts of credit in catalogs and multiple-page advertisements, has been incorporated in simplified form in paragraph (c).

SUBPART C—CLOSED-END CREDIT

Section 226.17—General Disclosure Requirements

17(a) Form of disclosures.

Paragraph 17(a)(1).

1. *Clear and conspicuous.* This standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no mathematical progression or format, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. In addition, although no minimum type size is mandated, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

2. *Segregation of disclosures.* The disclosures may be grouped together and segregated from other information in a variety of ways. For example, the disclosures may appear on a separate sheet of paper or may be set off from other information on the contract or other documents:

- By outlining them in a box.
- By bold print dividing lines.
- By a different color background.
- By a different type style.

3. *Location.* The regulation imposes no specific location requirements on the segregated disclosures. For example:

- They may appear on a disclosure statement separate from all other material.
- They may be placed on the same document with the credit contract or other information, so long as they are segregated from that information.
- They may be shown on the front or back of a document.
- They need not begin at the top of a page.
- They may be continued from one page to another.

4. *Content of segregated disclosures.* Footnotes 37 and 38 contain exceptions to the requirement that the disclosures under § 226.18 be segregated from material that is not directly related to those disclosures. Footnote 37 lists the items that may be added to the segregated disclosures, even though not directly related to those disclosures. Footnote 38 lists the items required under § 226.18 that may be deleted from the segregated disclosures and appear elsewhere. Any one or more of these additions or deletions may be combined and appear either together with or separate from the segregated disclosures. The itemization of the amount financed under § 226.18(c), however, must be separate from the other segregated disclosures under § 226.18.

5. *Directly related.* The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. Directly related information includes, for example, the following:

- A description of a grace period after which a late payment charge will be imposed. For example, the disclosure given under § 226.18(l) may state that a late charge will apply to "any payment received more than 15 days after the due date."
- A statement that the transaction is not secured. For example, the creditor may add a category labelled "unsecured" or "not secured" to the security interest disclosures given under § 226.18(m).
- The basis for any estimates used in making disclosures. For example, if the maturity date of a loan depends solely on the occurrence of a future event, the creditor may indicate that the disclosures assume that event will occur at a certain time.
- The conditions under which a demand feature may be exercised. For example, in a loan subject to demand after five years, the disclosures may state that the loan will become payable on demand in five years.
- When a variable-rate feature is disclosed on other documents under footnote 43 to § 226.18(f), a reference to the variable-rate feature and/or to other documents on which the variable-rate disclosures are made.
- An explanation of the use of pronouns or other references to the parties to the

transaction. For example, the disclosures may state,

"'You' refers to the customer and 'we' refers to the creditor."

- Instructions to the creditor or its employees on the use of a multiple-purpose form. For example, the disclosures may state, "Check box if applicable."
- A statement that the borrower may pay a minimum finance charge upon prepayment in a simple interest transaction. For example, when state law prohibits penalties, but would allow a minimum finance charge in the event of prepayment, the creditor may make the § 226.18(k)(1) disclosure by stating "You may be charged a minimum finance charge."
- A brief reference to negative amortization in variable-rate transactions. For example, in the variable-rate disclosure, the creditor may include a short statement such as "Unpaid interest will be added to principal." (See the Commentary to § 226.18(f)(3).)
- A brief caption identifying the disclosures. For example, the disclosures may bear a general title such as "Federal Truth in Lending Disclosures" or a descriptive title such as "Real Estate Loan Disclosures."
- A statement that a due-on-sale clause or other conditions on assumption are contained in the loan document. For example, the disclosure given under § 226.18(q) may state, "Someone buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms."

6. *Multiple-purpose forms.* The creditor may design a disclosure statement that can be used for more than one type of transaction, so long as the required disclosures for individual transactions are clear and conspicuous. (See the Commentary to Appendices G and H for a discussion of the treatment of disclosures that do not apply to specific transactions.) Any disclosure listed in § 226.18 (except the itemization of the amount financed under § 226.18(c)) may be included on a standard disclosure statement even though not all of the creditor's transactions include those features. For example, the statement may include:

- The variable rate disclosure under § 226.18(f).
- The demand feature disclosure under § 226.18(i).
- A reference to the possibility of a security interest arising from a spreader clause, under § 226.18(m).
- The assumption policy disclosure under § 226.18(q).
- The required deposit disclosure under § 226.18(r).

Paragraph 17(a)(2).

1. *When disclosures must be more conspicuous.* The following rules apply to the requirement that the terms "annual percentage rate" and "finance charge" be shown more conspicuously:

- The terms must be more conspicuous only in relation to the other required disclosures under § 226.18. For example, when the disclosures are included on the contract document, those 2 terms need not be more conspicuous as compared to the heading on the contract document or information required by state law.
- The terms need not be more conspicuous except as part of the finance charge and annual percentage rate disclosures under § 226.18 (d) and (e), although they may, at the creditor's option, be highlighted wherever used in the required disclosures. For example, the terms may, but need not, be highlighted when used in disclosing a prepayment penalty under § 226.18(k) or a required deposit under § 226.18(r).
- The creditor's identity under § 226.18(a) may, but need not, be more prominently displayed than the finance charge and annual percentage rate.
- The terms need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs)

2. *Making disclosures more conspicuous.* The terms "finance charge" and "annual percentage rate" may be made more conspicuous in any way that highlights them in relation to the other required disclosures. For example, they may be:

- Capitalized when other disclosures are printed in capital and lower case.
- Printed in larger type, bold print or different type face.
- Printed in a contrasting color.
- Underlined.
- Set off with asterisks.

17(b) Time of disclosures.

1. *Consummation.* As a general rule, disclosures must be made before "consummation" of the transaction. The disclosures need not be given by any particular time before consummation, except in certain mortgage transactions under § 226.19. (See the commentary to § 226.2(a)(13) regarding the definition of consummation.)

2. *Converting open-end to closed-end credit.* If an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction. If consummation of the closed-end transaction occurs at the same time as the consumer enters into the open-end agreement, the closed-end credit disclosures may be given at the time of conversion. If disclosures are delayed until con-

version and the closed-end transaction has a variable-rate feature, disclosures should be based on the rate in effect at the time of conversion. (See the commentary to § 226.5 regarding conversion of closed-end to open-end credit.)

17(c) Basis of disclosures and use of estimates.

Paragraph 17(c)(1).

1. *Legal obligation.* The disclosures should reflect the credit terms to which the parties are legally bound at the outset of the transaction. The legal obligation is determined by applicable state law or other law. (Certain transactions are specifically addressed in this commentary. See, for example, the discussion of buydown transactions elsewhere in the commentary to § 226.17(c).)

- The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

2. *Modification of obligation.* The legal obligation normally is presumed to be contained in the note or contract that evidences the agreement. But this presumption is rebutted if another agreement between the parties legally modifies that note or contract. If the parties informally agree to a modification of the legal obligation, the modification should not be reflected in the disclosures unless it rises to the level of a change in the terms of the legal obligation. For example:

- If the creditor-employer offers a preferential employee rate, the disclosures should reflect the terms of the legal obligation. (See the commentary to § 226.18(f) for an example of a preferred-rate employee transaction that is a variable-rate transaction.)
- If the contract provides for a certain monthly payment schedule but payments are made on a voluntary payroll deduction plan or an informal principal-reduction agreement, the disclosures should reflect the schedule in the contract.
- If the contract provides for regular monthly payments but the creditor informally permits the consumer to defer payments from time to time, for instance, to take account of holiday seasons or seasonal employment, the disclosures should reflect the regular monthly payments.

3. *Third-party buydowns.* In certain transactions, a seller or other third party may pay an amount, either to the creditor or to the consumer, in order to reduce the consumer's payments or buy down the interest rate for all or a portion of the credit term. For example, a consumer and a bank agree to a mortgage with an interest rate of 15% and level payments over 25 years. By a separate agreement, the seller of the property agrees to subsidize the consumer's payments for the first 2 years of the mortgage, giving the consumer an effective rate of 12% for that period.

- If the lower rate is reflected in the credit contract between the consumer and the bank, the disclosures must take the buydown into account. For example, the annual percentage rate must be a composite rate that takes account of both the lower initial rate and the higher subsequent rate, and the payment schedule disclosures must reflect the 2 payment levels. However, the amount paid by the seller would not be specifically reflected in the disclosures given by the bank, since that amount constitutes seller's points and thus is not part of the finance charge.
- If the lower rate is not reflected in the credit contract between the consumer and the bank and the consumer is legally bound to the 15% rate from the outset, the disclosures given by the bank must not reflect the seller buydown in any way. For example, the annual percentage rate and payment schedule would not take into account the reduction in the interest rate and payment level for the first 2 years resulting from the buydown.

4. *Consumer buydowns.* In certain transactions, the consumer may pay an amount to the creditor to reduce the payments or obtain a lower interest rate on the transaction. Consumer buydowns must be reflected in the disclosures given for that transaction. To illustrate, in a mortgage transaction, the creditor and consumer agree to a note specifying a 14 percent interest rate. However, in a separate document, the consumer agrees to pay an amount to the creditor at consummation in return for a reduction in the interest rate to 12 percent for a portion of the mortgage term. The amount paid by the consumer may be deposited in an escrow account or may be retained by the creditor. Depending upon the buydown plan, the consumer's prepayment of the obligation may or may not result in a portion of the amount being credited or refunded to the consumer. In the disclosures given for the mortgage, the creditor must reflect the terms of the buydown agreement. For example:

- The amount paid by the consumer is a prepaid finance charge (even if deposited in an escrow account).
- A composite annual percentage rate must be calculated, taking into account both interest rates, as well as the effect of the prepaid finance charge.
- The payment schedule must reflect the multiple payment levels resulting from the buydown.

5. *Split buydowns.* In certain transactions, a third party (such as a seller) and a con-

sumer both pay an amount tc the creditor to reduce the interest rate. The creditor must include the portion paid by the consumer in the finance charge and disclose the corresponding multiple payment levels and composite annual percentage rate. The portion paid by the third party and the corresponding reduction in interest rate, however, should not be reflected in the disclosures unless the lower rate is reflected in the credit contract. (See the discussion on third-party and consumer buydown transactions elsewhere in the commentary to § 226.17(c).)

6. *Wrap-around financing.* Wrap-around transactions, usually loans, involve the creditor's wrapping the outstanding balance on an existing loan and advancing additional funds to the consumer. The pre-existing loan, which is wrapped, may be to the same consumer or to a different consumer. In either case, the consumer makes a single payment to the new creditor, who makes the payments on the pre-existing loan to the original creditor. Wrap-around loans or sales are considered new single-advance transactions, with an amount financed equalling the sum of the new funds advanced by the wrap creditor and the remaining principal owed to the original creditor on the pre-existing loan. In disclosing the itemization of the amount financed, the creditor may use a label such as "the amount that will be paid to creditor X" to describe the remaining principal balance on the pre-existing loan. This approach to Truth in Lending calculations has no effect on calculations required by other statutes, such as state usury laws.

7. *Wrap-around financing with balloon payments.* For wrap-around transactions involving a large final payment of the new funds before the maturity of the pre-existing loan, the amount financed is the sum of the new funds and the remaining principal on the pre-existing loan. The disclosures should be based on the shorter term of the wrap loan, with a large final payment of both the new funds and the total remaining principal on the pre-existing loan (although only the wrap loan will actually be paid off at that time).

8. *Graduated payment adjustable rate mortgages.* These mortgages involve both a variable interest rate and scheduled variations in payment amounts during the loan term. For example, under these plans, a series of graduated payments may be scheduled before rate adjustments affect payment amounts, or the initial scheduled payment may remain constant for a set period before rate adjustments affect the payment amount. In any case, the initial payment amount may be insufficient to cover the scheduled interest, causing negative amortization from the outset of the transaction. In these transactions, the disclosures should treat these features as follows:

- The finance charge includes the amount of negative amortization based on the assumption that the rate in effect at consummation remains unchanged.
- The amount financed does not include the amount of negative amortization.
- As in any variable-rate transaction, the annual percentage rate is based on the terms in effect at consummation.
- The schedule of payments discloses the amount of any scheduled initial payments followed by an adjusted level of payments based on the initial interest rate. Since some mortgage plans contain limits on the amount of the payment adjustment, the payment schedule may require several different levels of payments, even with the assumption that the original interest rate does not increase.

9. *Morris Plan transactions.* When a deposit account is created for the sole purpose of accumulating payments and then is applied to satisfy entirely the consumer's obligation in the transaction, each deposit made into the account is considered the same as a payment on a loan for purposes of making disclosures.

10. *Number of transactions.* Creditors have flexibility in handling credit extensions that may be viewed as multiple transactions. For example:

- When a creditor finances the credit sale of a radio and a television on the same day, the creditor may disclose the sales as either 1 or 2 credit sale transactions.
- When a creditor finances a loan along with a credit sale of health insurance, the creditor may disclose in one of several ways: a single credit sale transaction, a single loan transaction, or a loan and a credit sale transaction.
- The separate financing of a downpayment in a credit sale transaction may, but need not, be disclosed as 2 transactions (a credit sale and a separate transaction for the financing of the downpayment).

Paragraph 17(c)(2).

1. *Basis for estimates.* Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time the disclosures are made. The "reasonably available" standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. For example, the creditor must at a minimum utilize generally accepted calculation tools, but need not invest in the most sophisticated computer program to make a particular type of calculation. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to the consumer for the time of consummation, to insurance companies

for the cost of insurance, or to realtors for taxes and escrow fees. The creditor may utilize estimates in making disclosures even though the creditor knows that more precise information will be available by the point of consummation. However, new disclosures may be required under § 226.17(f) or § 226.19.

2. *Labelling estimates.* Estimates must be designated as such in the segregated disclosures. Even though other disclosures are based on the same assumption on which a specific estimated disclosure was based, the creditor has some flexibility in labelling the estimates. Generally, only the particular disclosure for which the exact information is unknown is labelled as an estimate. However, when several disclosures are affected because of the unknown information, the creditor has the option of labelling either every affected disclosure or only the disclosure primarily affected. For example, when the finance charge is unknown because the date of consummation is unknown, the creditor must label the finance charge as an estimate and may also label as estimates the total of payments and the payment schedule. When many disclosures are estimates, the creditor may use a general statement, such as "all numerical disclosures except the late payment disclosure are estimates," as a method to label those disclosures as estimates.

Paragraph 17(c)(3)

1. *Minor variations.* Section 226.17(c)(3) allows creditors to disregard certain factors in calculating and making disclosures. For example:

- Creditors may ignore the effects of collecting payments in whole cents. Because payments cannot be collected in fractional cents, it is often difficult to amortize exactly an obligation with equal payments; the amount of the last payment may require adjustment to account for the rounding of the other payments to whole cents.
- Creditors may base their disclosures on calculation tools that assume that all months have an equal number of days, even if their practice is to take account of the variations in months for purposes of collecting interest. For example, a creditor may use a calculation tool based on a 360-day year, when it in fact collects interest by applying a factor of 1/365 of the annual rate to 365 days. This rule does not, however, authorize creditors to ignore, for disclosure purposes, the effects of applying 1/360 of an annual rate to 365 days.

2. *Use of special rules.* A creditor may utilize the special rules in § 226.17(c)(3) for purposes of calculating and making all disclosures for a transaction or may, at its option, use the special rules for some disclosures and not others.

Paragraph 17(c)(4).

1. *Payment schedule irregularities.* When one or more payments in a transaction differ from the others because of a long or short first period, the variations may be ignored in disclosing the payment schedule, finance charge, annual percentage rate, and other terms. For example:

- A 36-month auto loan might be consummated on June 8 with payments due on July 1 and the first of each succeeding month. The creditor may base its calculations on a payment schedule that assumes 36 equal intervals and 36 equal installment payments, even though a precise computation would produce slightly different amounts because of the shorter first period.
- By contrast, in the same example, if the first payment were not scheduled until August 1, the irregular first period would exceed the limits in § 226.17(c)(4); the creditor could not use the special rule and could not ignore the extra days in the first period in calculating its disclosures.

2. *Measuring odd periods.* In determining whether a transaction may take advantage of the rule in § 226.17(c)(4), the creditor must measure the variation against a regular period. For purposes of that rule:

- The first period is the period from the date on which the finance charge begins to be earned to the date of the first payment.
- The term is the period from the date on which the finance charge begins to be earned to the date of the final payment.
- The regular period is the most common interval between payments in the transaction.

In transactions involving regular periods that are monthly, semimonthly or multiples of a month, the length of the irregular and regular periods may be calculated on the basis of either the actual number of days or an assumed 30-day month. In other transactions, the length of the periods is based on the actual number of days.

3. *Use of special rules.* A creditor may utilize the special rules in § 226.17(c)(4) for purposes of calculating and making some disclosures but may elect not to do so for all of the disclosures. For example, the variations may be ignored in calculating and disclosing the annual percentage rate but taken into account in calculating and disclosing the finance charge and payment schedule.

Paragraph 17(c)(5).

1. *Demand disclosures.* Disclosures for demand obligations are based on an assumed 1-year term, unless an alternate maturity date is stated in the legal obligation. Whether an alternate maturity date is stated in the legal obligation is determined by applicable law. An alternate maturity date is not inferred from an informal principal reduction agreement or a similar under-

standing between the parties. However, when the note itself specifies a principal reduction schedule (for example, "payable on demand or $2,000 plus interest quarterly"), an alternate maturity is stated and the disclosures must reflect that date.

2. *Future event as maturity date.* An obligation whose maturity date is determined solely by a future event, as for example, a loan payable only on the sale of property, is not a demand obligation. Because no demand feature is contained in the obligation, demand disclosures under § 226.18(i) are inapplicable. The disclosures should be based on the creditor's estimate of the time at which the specified event will occur, and may indicate the basis for the creditor's estimate, as noted in the commentary to § 226.17(a).

3. *Demand after stated period.* Most demand transactions contain a demand feature that may be exercised at any point during the term, but certain transactions convert to demand status only after a fixed period. For example, in States prohibiting due-on-sale clauses, the Federal National Mortgage Association (FNMA) requires mortgages that it purchases to include a call option rider that may be exercised after 7 years. These mortgages are generally written as long-term obligations, but contain a demand feature that may be exercised only within a 30-day period at 7 years. The disclosures for these transactions should be based upon the legally agreed-upon maturity date. Thus, if a mortgage containing the 7-year FNMA call option is written as a 20-year obligation, the disclosures should be based on the 20-year term, with the demand feature disclosed under § 226.18(i).

4. *Balloon mortgages.* Balloon payment mortgages, with payments based on a long-term amortization schedule and a large final payment due after a shorter term, are not demand obligations unless a demand feature is specifically contained in the contract. For example, a mortgage with a term of 5 years and a payment schedule based on 20 years would not be treated as a mortgage with a demand feature, in the absence of any contractual demand provisions. In this type of mortgage, disclosures should be based on the 5-year term.

Paragraph 17(c)(6).

1. *Series of advances.* Section 226.17(c)(6)(i) deals with a series of advances under an agreement to extend credit up to a certain amount. A creditor may treat all of the advances as a single transaction or disclose each advance as a separate transaction. If these advances are treated as 1 transaction and the timing and amounts of advances are unknown, creditors must make disclosures based on estimates, as provided in § 226.17(c)(2). If the advances are disclosed separately, disclosures must be provided before each advance occurs, with the disclosures for the first advance provided by consummation.

2. *Construction loans.* Section 226.17(c)(6)(ii) provides a flexible rule for disclosure of construction loans that may be permanently financed. These transactions have 2 distinct phases, similar to 2 separate transactions. The construction loan may be for initial construction or subsequent construction, such as rehabilitation or remodelling. The construction period usually involves several disbursements of funds at times and in amounts that are unknown at the beginning of that period, with the consumer paying only accrued interest until construction is completed. Unless the obligation is paid at that time, the loan then converts to permanent financing in which the loan amount is amortized just as in a standard mortgage transaction. Section 226.17(c)(6)(ii) permits the creditor to give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for the 2 phases. This rule is available whether the consumer is initially obligated to accept construction financing only or is obligated to accept both construction and permanent financing from the outset. If the consumer is obligated on both phases and the creditor chooses to give 2 sets of disclosures, both sets must be given to the consumer initially, because both transactions would be consummated at that time. (Appendix D provides a method of calculating the annual percentage rate and other disclosures for construction loans, which may be used, at the creditor's option, in disclosing construction financing.)

3. *Multiple-advance construction loans.* Section 226.17(c)(6)(i) and (ii) are not mutually exclusive. For example, in a transaction that finances the construction of a dwelling that may be permanently financed by the same creditor, the construction phase may consist of a series of advances under an agreement to extend credit up to a certain amount. In these cases, the creditor may disclose the construction phase as either 1 or more than 1 transaction and also disclose the permanent financing as a separate transaction.

4. *Residential mortgage transaction.* See the commentary to § 226.2(a)(24) for a discussion of the effect of § 226.17(c)(6) on the definition of a residential mortgage transaction.

5. *Allocation of points.* When a creditor utilizes the special rule in § 226.17(c)(6) to disclose credit extensions as multiple transactions, buyers points or similar amounts imposed on the consumer must be allocated for purposes of calculating disclosures. While such amounts should not be taken into account more than once in making calculations, they may be allocated between

the transactions in any manner the creditor chooses. For example, if a construction-permanent loan is subject to 5 points imposed on the consumer and the creditor chooses to disclose the 2 phases separately, the 5 points may be allocated entirely to the construction loan, entirely to the permanent loan, or divided in any manner between the two. However, the entire 5 points may not be applied twice, that is, to both the construction and the permanent phases.

17(d) Multiple Creditors; Multiple Consumers.

1. *Multiple creditors.* If a credit transaction involves more than one creditor:

- The creditors must choose which of them will make the disclosures.
- A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.
- All disclosures for the transaction must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure. For example, if one of the creditors is the seller, the total sale price disclosure under § 226.18(j) must be made, even though the disclosing creditor is not the seller.

2. *Multiple consumers.* When 2 consumers are joint obligors with primary liability on an obligation, the disclosures may be given to either one of them. If one consumer is merely a surety or guarantor, the disclosures must be given to the principal debtor. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 226.23.

17(e) Effect of subsequent events.

1. *Events causing inaccuracies.* Inaccuracies in disclosures are not violations if attributable to events occurring after the disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to make new disclosures under § 226.17(f) or § 226.19 if the events occurred between disclosure and consummation or under § 226.20 if the events occurred after consummation.

17(f) Early disclosures.

1. *Change in rate.* No redisclosure is required for changes that occur between the time disclosures are made and consummation, unless the annual percentage rate in the consummated transaction exceeds the limits prescribed in § 226.22(a) (⅛ of 1 percentage point in regular transactions and ¼ of 1 percentage point in irregular transactions). To illustrate:

- If disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than ⅛ of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

2. *Variable rate.* The addition of a variable rate feature to the credit terms, after early disclosures are given, requires new disclosures.

3. *Content of new disclosures.* If redisclosure is required, the creditor has the option of either providing a complete set of new disclosures, or providing disclosures of only the terms that vary from those originally disclosed. (See the commentary to § 226.19(b).)

4. *Special rules.* In residential mortgage transactions subject to § 226.19, the creditor must redisclose if, between the delivery of the required early disclosures and consummation, the annual percentage rate changes by more than a stated tolerance. When subsequent events occur *after* consummation, new disclosures are required only if there is a refinancing or an assumption within the meaning of § 226.20.

17(g) Mail or telephone orders—delay in disclosures.

1. *Conditions for use.* When the creditor receives a mail or telephone request for credit, the creditor may delay making the disclosures until the first payment is due if the following conditions are met:

- The credit request is initiated without face-to-face or direct telephone solicitation. (Creditors may, however, use the special rule when credit requests are solicited by mail.)
- The creditor has supplied the specified credit information about its credit terms either to the individual consumer or to the public generally. That information may be distributed through advertisements, catalogs, brochures, special mailers, or similar means.

2. *Insurance.* The location requirements for the insurance disclosures under § 226.18(n) permit them to appear apart from the other disclosures. Therefore, a creditor may mail an insurance authorization to the consumer and then prepare the other disclosures to reflect whether or not the authorization is completed by the consumer. Creditors may also disclose the insurance cost on a unit-cost basis, if the transaction meets the requirements of § 226.17(g).

17(h) Series of sales—delay in disclosures.

1. *Applicability.* The creditor may delay the disclosures for individual credit sales in a series of such sales until the first payment

is due on the current sale, assuming the 2 conditions in this paragraph are met. If those conditions are not met, the general timing rules in § 266.17(b) apply.

2. *Basis of disclosures.* Creditors structuring disclosures for a series of sales under § 226.17(h) may compute the total sale price as either:

- The cash price for the sale plus that portion of the finance charge and other charges applicable to that sale; or
- The cash price for the sale, other charges applicable to the sale, and the total finance charge and outstanding principal.

17(i) Interim student credit extensions.

1. *Definition.* Student credit plans involve extensions of credit for education purposes where the repayment amount and schedule are not known at the time credit is advanced. These plans include loans made under any student credit plan, whether government or private, where the repayment period does not begin immediately. (Certain student credit plans that meet this definition are exempt from Regulation Z. See § 226.3(f).) Creditors in interim student credit extensions need not disclose the terms set forth in this paragraph at the time the credit is actually extended but must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under § 226.18.

2. *Basis of disclosures.* The disclosures given at the time of execution of the interim note should reflect two annual percentage rates, one for the interim period and one for the repayment period. The use of § 226.17(i) in making disclosures does not, by itself, make those disclosures estimates. Any portion of the finance charge, such as statutory interest, that is attributable to the interim period and is paid by the student (either as a prepaid finance charge, periodically during the interim period, in one payment at the end of the interim period, or capitalized at the beginning of the repayment period) must be reflected in the interim annual percentage rate. Interest subsidies, such as payments made by either a state or the Federal government on an interim loan, must be excluded in computing the annual percentage rate on the interim obligation, when the consumer has no contingent liability for payment of those amounts. Any finance charges that are paid separately by the student at the outset or withheld from the proceeds of the loan are prepaid finance charges. An example of this type of charge is the loan guarantee fee. The sum of the prepaid finance charges is deducted from the loan proceeds to determine the amount financed and included in the calculation of the finance charge.

3. *Consolidation.* Consolidation of the interim student credit extensions through a renewal note with a set repayment schedule is treated as a new transaction with disclosures made as they would be for a refinancing. Any unearned portion of the finance charge must be reflected in the new finance charge and annual percentage rate, and is not added to the new amount financed. In itemizing the amount financed under § 226.18(c), the creditor may combine the principal balances remaining on the interim extensions at the time of consolidation and categorize them as the amount paid on the consumer's account.

4. *Approved student credit forms.* See the commentary to Appendix H regarding disclosure forms approved for use in certain student credit programs.

References

Statute: Sections 121, 122, 124, and 128, and the Higher Education Act of 1965 (20 U.S.C. 1071) as amended by Pub. L. 97-35, August 13, 1981.

Other sections: Section 226.2 and Appendix H.

Previous regulation: Sections 226.6 and 226.8.

1981 changes: With few exceptions, the disclosures must now appear apart from all other information, and may not be interspersed with that information. The disclosures must be based on the legal obligation between the parties, rather than any side agreement.

The assumed maturity period for demand loans has been increased from 6 months to 1 year. Any alternate maturity date must be stated in the legal obligation rather than inferred from the documents, in order to form a basis for disclosures.

In multiple-advance transactions, a series of advances up to a certain amount and construction loans that may be permanently financed may be disclosed, at the creditor's option, as either a single transaction or several transactions. Appendix D is applicable only to multiple advances for the construction of a dwelling, whereas its predecessor, Interpretation § 226.813, could be used for all multiple-advance transactions.

If disclosures are made before the date of consummation, the creditor need not provide updated disclosures at consummation unless the annual percentage rate has changed beyond certain limits or a variable rate feature has been added.

Section 226.18—Content of Disclosures

1. *As applicable.* The disclosures required by this section need be made only as applicable. Any disclosure not relevant to a particular transaction may be eliminated entirely. For example:

- In a loan transaction, the creditor may delete disclosure of the total sale price.
- In a credit sale requiring disclosure of the total sale price under § 226.18(j), the creditor may delete any reference to a downpayment where no downpayment is involved.

Where the amounts of several numerical disclosures are the same, the "as applicable" language also permits creditors to combine the terms, so long as it is done in a clear and conspicuous manner. For example:

- In a transaction in which the amount financed equals the total of payments, the creditor may disclose "amount financed/total of payments," together with descriptive language, followed by a single amount.
- However, if the terms are separated on the disclosure statement and separate space is provided for each amount, both disclosures must be completed, even though the same amount is entered in each space.

2. *Format.* See the commentary to § 226.17 and Appendix H for a discussion of the format to be used in making these disclosures, as well as acceptable modifications.

18(a) Creditor.

1. *Identification of creditor.* The creditor making the disclosures must be identified. This disclosure may, at the creditor's option, appear apart from the other disclosures. Use of the creditor's name is sufficient, but the creditor may also include an address and/or telephone number. In transactions with multiple creditors, any one of them may make the disclosures; the one doing so must be identified.

18(b) Amount financed.

1. *Disclosure required.* The net amount of credit extended must be disclosed using the term "amount financed" and a descriptive explanation similar to the phrase in the regulation.

2. *Rebates and loan premiums.* In a loan transaction, the creditor may offer a premium in the form of cash or merchandise to prospective borrowers. Similarly, in a credit sale transaction, a seller's or manufacturer's rebate may be offered to prospective purchasers of the creditor's goods or services. At the creditor's option, these amounts may be either reflected in the Truth in Lending disclosures or disregarded in the disclosures. If the creditor chooses to reflect them in the § 226.18 disclosures, rather than disregard them, they may be taken into account in any manner as part of those disclosures.

Paragraph 18(b)(1).

1. *Downpayments.* A downpayment is defined in § 226.2(a)(18) to include, at the creditor's option, certain deferred downpayments or pick-up payments. A deferred downpayment that meets the criteria set forth in the definition may be treated as part of the downpayment, at the creditor's option.

- Deferred downpayments that are not treated as part of the downpayment (either because they do not meet the definition or because the creditor simply chooses not to treat them as downpayments) are included in the amount financed.
- Deferred downpayments that are treated as part of the downpayment are not part of the amount financed under § 226.18(b)(1).

Paragraph 18(b)(2).

1. *Adding other amounts.* Fees or other charges that are not part of the finance charge and that are financed rather than paid separately at consummation of the transaction are included in the amount financed. Typical examples are real estate settlement charges and premiums for voluntary credit life and disability insurance excluded from the finance charge under § 226.4. This paragraph does not include any amounts already accounted for under § 226.18(b)(1), such as taxes, tag and title fees, or the costs of accessories or service policies that the creditor includes in the cash price.

Paragraph 18(b)(3).

1. *Prepaid finance charges.* Prepaid finance charges, as defined in § 226.2, must be deducted in calculating the amount financed. Under § 226.2, add-on and discount charges are not considered prepaid finance charges. Other types of finance charges added to the face amount of the note, such as loan fees financed by the creditor, need not be treated as prepaid finance charges. The computational step called for by this paragraph should not duplicate any subtraction accounted for under § 226.18(b)(1). To illustrate:

- A consumer applies for a loan of $2500, subject to simple interest, with a $40 loan fee. The creditor assesses the $40 loan fee by increasing the face amount of the obligation to $2540. If the creditor chooses not to treat the loan fee as a prepaid finance charge, the principal for purposes of § 226.18(b)(1) is $2500 and no amounts are deducted under § 226.18(b)(3). If the creditor chooses to treat the loan fee as a prepaid finance charge, the principal for purposes of § 226.18(b)(1) is $2540 and $40 is deducted under § 226.18(b)(3).

2. *Add-on or discount charges.* All finance charges must be deducted from the amount of credit in calculating the amount financed. If the principal loan amount reflects finance charges that meet the definition of a prepaid finance charge in § 226.2, those charges are included in the § 226.18(b)(1) amount and deducted under § 226.18(b)(3). However, if the principal loan amount includes finance charges that do not meet the definition of a prepaid finance charge, the § 226.18(b)(1) amount must exclude those finance charges. The following

examples illustrate the application of § 226.18(b) to these types of transactions. Each example assumes a loan request of $1000 for 1 year, subject to a 6 percent precomputed interest rate, with a $10 loan fee paid separately at consummation.

- The creditor assesses add-on interest of $60 which is added to the $1000 in loan proceeds for an obligation with a face amount of $1060. The principal for purposes of § 226.18(b)(1) is $1000, no amounts are added under § 226.18(b)(2), and the $10 loan fee is a prepaid finance charge to be deducted under § 226.18(b)(3). The amount financed is $990.
- The creditor assesses discount interest of $60 and distributes $940 to the consumer, who is liable for an obligation with a face amount of $1000. The principal under § 226.18(b)(1) is $940, which results in an amount financed of $930, after deduction of the $10 prepaid finance charge under § 226.18(b)(3).
- The creditor assesses $60 in discount interest by increasing the face amount of the obligation to $1060, with the consumer receiving $1000. The principal under § 226.18(b)(1) is thus $1000 and the amount financed $990, after deducting the $10 prepaid finance charge under § 226.18(b)(3).

18(c) Itemization of amount financed.

1. *Disclosure required.* The creditor has 2 alternatives in complying with § 226.18(c):

- The creditor may inform the consumer, on the segregated disclosures, that a written itemization of the amount financed will be provided on request, furnishing the itemization only if the customer in fact requests it.
- The creditor may provide an itemization as a matter of course, without notifying the consumer of the right to receive it or waiting for a request.

Whether given as a matter of course or only on request, the itemization must be provided at the same time as the other disclosures required by § 226.18, although separate from those disclosures.

2. *Additional information.* Section 226.18(c) establishes only a minimum standard for the material to be included in the itemization of the amount financed. Creditors have considerable flexibility in revising or supplementing the information listed in § 226.18(c) and shown in model form H-3, although no changes are required. The creditor may, for example, do one or more of the following:

- Include amounts that reflect payments not part of the amount financed. For example, escrow items and certain insurance premiums may be included, as discussed in the commentary to § 226.18(g).
- Organize the categories in any order. For example, the creditor may rearrange the terms in a mathematical progression that depicts the arithmetic relationship of the terms.
- Add categories. For example, in a credit sale, the creditor may include the cash price and the downpayment.
- Further itemize each category. For example, the amount paid directly to the consumer may be subdivided into the amount given by check and the amount credited to the consumer's savings account.
- Label categories with different language from that shown in § 226.18(c). For example, an amount paid on the consumer's account may be revised to specifically identify the account as "your auto loan with us."
- Delete, leave blank, mark "N/A" or otherwise note inapplicable categories in the itemization. For example, in a credit sale with no prepaid finance charges or amounts paid to others, the amount financed may consist of only the cash price less downpayment. In this case, the itemization may be composed of only a single category and all other categories may be eliminated.

3. *Amounts appropriate to more than one category.* When an amount may appropriately be placed in any of several categories and the creditor does not wish to revise the categories shown in § 226.18(c), the creditor has considerable flexibility in determining where to show the amount. For example:

- In a credit sale, the portion of the purchase price being financed by the creditor may be viewed as either an amount paid to the consumer or an amount paid on the consumer's account.

4. *RESPA transactions.* The Real Estate Settlement Procedures Act (RESPA) requires creditors to provide good faith estimates of closing costs. Transactions subject to RESPA are exempt from the requirements of § 226.18(c), when the creditor complies with the good faith estimates requirement of RESPA. The itemization of the amount financed need not be given, even though the content and timing of the good faith estimates under RESPA differ from the § 226.18(c) requirement.

Paragraph 18(c)(1)(i).

1. *Amounts paid to consumer.* This encompasses funds given to the consumer in the form of cash or a check, including joint proceeds checks, as well as funds placed in an asset account. It may include money in an interest-bearing account even if that amount is considered a required deposit under § 226.18(r). For example, in a transaction with total loan proceeds of $500, the consumer receives a check for $300 and $200 is required by the creditor to be put into an interest-bearing account. Whether or not the $200 is a required deposit, it is part of the amount financed. At the creditor's option, it may be broken out and labeled in the itemization of the amount financed.

Paragraph 18(c)(1)(ii).

1. *Amounts credited to consumer's account.* The term "consumer's account" refers to an account in the nature of a debt with that creditor. It may include, for example, an unpaid balance on a prior loan, a credit sale balance or other amounts owing to that creditor. It does not include asset accounts of the consumer such as savings or checking accounts.

Paragraph 18(c)(1)(iii).

1. *Amounts paid to others.* This includes, for example, tag and title fees; amounts paid to insurance companies for insurance premiums; security interest fees, and amounts paid to credit bureaus, appraisers or public officials. When several types of insurance premiums are financed, they may, at the creditor's option, be combined and listed in one sum, labeled "insurance" or similar term. This includes, but is not limited to, different types of insurance premiums paid to 1 company and different types of insurance premiums paid to different companies. Except for insurance companies and other categories noted in footnote 40, third parties must be identified by name.

Paragraph 18(c)(1)(iv).

1. *Prepaid finance charge.* The prepaid finance charges must be shown as a total amount but may, at the creditor's option, also be further itemized and described. All amounts must be reflected in this total, even if portions of the prepaid finance charge are also reflected elsewhere. For example, if at consummation the creditor collects interim interest of $30 and a credit report fee of $10, a total prepaid finance charge of $40 must be shown. At the creditor's option, the credit report fee paid to a third party may also be shown elsewhere as an amount included in § 226.18(c)(1)(iii). The creditor may also further describe the 2 components of the prepaid finance charge, although no itemization of this element is required by § 226.18(c)(1)(iv).

18(d) Finance charge.

1. *Disclosure required.* The creditor must disclose the finance charge as a dollar amount, using the term "finance charge," and must include a brief description similar to that in § 226.18(d). The creditor may, but need not, further modify the descriptor for variable rate transactions with a phrase such as "which is subject to change." The finance charge must be shown on the disclosures only as a total amount; the elements of the finance charge must not be itemized in the segregated disclosures, although the regulation does not prohibit their itemization elsewhere.

2. *Tolerance.* A tolerance for the finance charge is provided in footnote 41.

18(e) Annual percentage rate.

1. *Disclosure required.* The creditor must disclose the cost of the credit as an annual rate, using the term "annual percentage rate," plus a brief descriptive phrase comparable to that used in § 226.18(e). For variable rate transactions, the descriptor may be further modified with a phrase such as "which is subject to change." Under § 226.17(a), the terms "annual percentage rate" and "finance charge" must be more conspicuous than the other required disclosures.

2. *Exception.* Footnote 42 provides an exception for certain transactions in which no annual percentage rate disclosure is required.

18(f) Variable rate.

1. *Coverage.* The requirements of § 226.18(f) apply to all transactions in which the terms of the legal obligation allow the creditor to increase the rate originally disclosed to the consumer. It includes not only increases in the interest rate but also increases in other components, such as the rate of required credit life insurance. The provisions, however, do not apply tc increases resulting from delinquency (including late payment), default, assumption, acceleration or transfer of the collateral.

2. *Basis for disclosures.* For transactions subject to the requirements of § 226.18(f), the disclosures must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. However, in a variable rate transaction with either the seller buydown that is reflected in the credit contract or a consumer buydown, disclosures should not be based solely on the initial terms. In those transactions, the disclosed annual percentage rate should be a composite rate based on the lower rate for the buydown period and the rate that is the basis of the variable rate feature for the remainder of the term. (See the Commentary to § 226.17(c) for a discussion of buydown transactions.)

3. *Use of estimates.* The variable rate feature does not, by itself, make the disclosures estimates. (See the Commentary to § 226.17(c) for a discussion of basis for estimates.)

4. *Terms used in disclosure.* In describing the variable rate feature, the creditor need not use any prescribed terminology. For example, limitations and hypothetical examples may be described in terms of interest rates rather than annual percentage rates. The model forms in Appendix H provide examples of ways in which the variable rate disclosures may be made.

5. *Other variable-rate regulations.* Transactions in which the creditor is required to comply with and has complied with variable-rate regulations of other Federal agencies are exempt from the requirements of § 226.18(f), by virtue of footnote 43. Those variable-rate regulations include the adjustable mortgage loan instrument regulation issued by the Federal Home Loan Bank

Board (12 CFR 545.33), the adjustable-rate mortgage regulation issued by the Comptroller of the Currency (12 CFR Part 29) and the adjustable-rate mortgage regulations issued by the Department of Housing and Urban Development (24 CFR Parts 203 and 234). The exception in footnote 43 is also available to creditors that are required by state law to comply with the Federal variable-rate regulations noted above and to creditors that are authorized by title VIII of the Depository Institutions Act of 1982 (Pub. L. 97-320) to make loans in accordance with those regulations. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures.

6. *Examples of variable rate transactions.* The following transactions constitute variable rate transactions:

- Renegotiable rate mortgage instruments that involve a series of short-term loans secured by a long-term obligation, where the lender is obligated to renew the short-term loans at the consumer's option. At the time of renewal, the lender has the option of increasing the interest rate. Disclosures must be given for the longer term of the obligation, with all disclosures calculated on the basis of the rate in effect at the time of consummation of the transaction.
- "Shared equity" or "shared appreciation" mortgages that have a fixed rate of interest and an appreciation share based on the consumer's equity in the mortgaged property. The appreciation share is payable in a lump sum at a specified time. Disclosures must be based on the fixed interest rate. The shared appreciation feature, including the conditions for its imposition, the time at which it would be collected, and the limitation on the creditor's share, must be described under § 226.18(f). (As discussed in § 226.2, other types of shared-equity arrangements are not considered "credit" and are not subject to Regulation Z.)
- Preferred rate employee loans where the terms of the legal obligation provide that the rate will increase only if the employee leaves the employ of the creditor and the note reflects the preferred rate. The disclosures are to be based on that rate, with the hypothetical example based on the increase from the preferred rate.

Graduated payment mortgages and step-rate transactions without a variable rate feature are not considered variable rate transactions.

7. *Growth equity mortgages.* Also referred to as payment escalated mortgages, these mortgage plans involve scheduled payment increases to prematurely amortize the loan. The initial payment amount is determined as for a long-term loan with a fixed interest rate. Payment increases are scheduled periodically, based on changes in an index. The larger payments result in accelerated amortization of the loan. In disclosing these mortgage plans, creditors may either:

- Estimate the amount of payment increases, based on the best information reasonably available; or
- Disclose by analogy to the variable rate disclosures, indicating that the payments are subject to increase, describing the circumstances under which the payments would increase, together with limitations on the increase, and providing an example of the increase.

(This discussion does not apply to growth equity mortages in which the amount of payment increases can be accurately determined at the time of disclosure. For these mortages, as for graduated payment mortages, disclosures should reflect the scheduled increases in payments.)

8. *Discounted variable-rate transactions.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. In a discounted transaction, for example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the Treasury bill rate at consummation is 10 percent, the creditor may forego the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

- When creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use the index value in effect not more than 45 days before consummation in calculating a composite annual percentage rate.
- The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule.
- If a loan contains a rate or payment cap that would prevent the initial rate or pay-

ment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

- Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of ¼ of 1 percent applies, in accordance with section § 226.22(a)(3) of the regulation.
- Examples of discounted variable-rate transactions include:

—A 30-year loan for $100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule should show 12 payments of $804.62 and 348 payments of $1,025.31. The finance charge should be $266,463.32 and the total of payments $366,463.32.

—Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule should show 12 payments of $804.62, 12 payments of $950.09, and 336 payments of $1,024.34. The finance charge should be $265,234.76, and the total of payments $365,234.76.

—Same loan as above, except with a 7½ percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. Because of the payment cap, five levels of payments should be reflected. The payment schedule should show 12 payments of $804.62, 12 payments of $864.97, 12 payments of $929.86, 12 payments of $999.60, and 312 payments of $1,070.03. The finance charge should be $277,037.96, and the total of payments $377,037.96.

This paragraph does not apply to variable-rate loans in which the initial interest rate is set according to the index or formula used for later adjustments, but is not set at the value of the index or formula at consummation. For example, if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor should base its disclosures on the initial rate.

Paragraph 18(f)(1).

1. *Circumstances.* The circumstances under which the rate may increase include identification of any index to which the rate is tied, as well as any conditions or events on which the increase is contingent.

- When no specific index is used, any identifiable factors used to determine whether to increase the rate must be disclosed.
- When the increase in the rate is purely discretionary, the fact that any increase is within the creditor's discretion must be disclosed.
- When the index is internally defined (for example, by that creditor's prime rate), the creditor may comply with this requirement by either a brief description of that index or a statement that any increase is in the discretion of the creditor. An externally defined index, however, must be identified.

Paragraph 18(f)(2).

1. *Limitations.* This includes any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the life of the transaction. When there are no limitations, the creditor may, but need not, disclose that fact. Limitations do not include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations.

Paragraph 18(f)(3).

1. *Effects.* Disclosure of the effect of an increase refers to an increase in the number or amount of payments or an increase in the final payment. In addition, the creditor may make a brief reference to negative amortization that may result from a rate increase. (See the commentary to § 226.17(a)(1) regarding directly related information.) If the effect cannot be determined, the creditor must provide a statement of the possible effects. For example, if the exercise of the variable-rate feature may result in either more or larger payments, both possibilities must be noted.

Paragraph 18(f)(4).

1. *Hypothetical example.* The example may, at the creditor's option, appear apart from the other disclosures. The creditor may provide either a standard example that illustrates the terms and conditions of that type of credit offered by that creditor or an example that directly reflects the terms and conditions of the particular transaction.

2. *Hypothetical example not required.* The creditor need not provide a hypothetical example in the following transactions with a variable-rate feature:

- Demand obligations with no alternate maturity date.
- Interim student credit extensions.

- Multiple-advance construction loans disclosed pursuant to Appendix D, Part I.

18(g) Payment schedule.

1. *Amounts included in repayment schedule.* The repayment schedule should reflect all components of the finance charge, not merely the portion attributable to interest. A prepaid finance charge, however, should not be shown in the repayment schedule as a separate payment. The payments may include amounts beyond the amount financed and finance charge. For example, the disclosed payments may, at the creditor's option, reflect certain insurance premiums where the premiums are not part of either the amount financed or the finance charge, as well as real estate escrow amounts such as taxes added to the payment in mortage transactions.

2. *Deferred downpayments.* As discussed in the commentary to § 226.2(a)(18), deferred downpayments or pick-up payments that meet the conditions set forth in the definition of downpayment may be treated as part of the downpayment. Even if treated as a downpayment, that amount may nevertheless be disclosed as part of the payment schedule, at the creditor's option.

3. *Total number of payments.* In disclosing the number of payments for transactions with more than one payment level, creditors may but need not disclose as a single figure the total number of payments for all levels. For example, in a transaction calling for 108 payments of $350, 240 payments of $335, and 12 payments of $330, the creditor need not state that there will be a total of 360 payments.

Paragraph 18(g)(1).

1. *Demand obligations.* In demand obligations with no alternate maturity date, the creditor has the option of disclosing only the due dates or periods of scheduled interest payments in the first year (for example, "interest payable quarterly" or "interest due the first of each month"). The amounts of the interest payments need not be shown.

Paragraph 18(g)(2).

1. *Abbreviated disclosure.* The creditor may disclose an abbreviated payment schedule when the amount of each regularly scheduled payment (other than the first or last payment) includes an equal amount to be applied on principal and a finance charge computed by application of a rate to the decreasing unpaid balance. This option is also available when mortage-guarantee insurance premiums, paid either monthly or annually, cause variations in the amount of the scheduled payments, reflecting the continual decrease or increase in the premium due. The creditor using this alternative must disclose the dollar amount of the highest and lowest payments and make reference to the variation in payments.

2. *Combined payment schedule disclosures.* Creditors may combine the option in this paragraph with the general payment schedule requirements in transactions where only a portion of the payment schedule meets the conditions of § 226.18(g)(2). For example, in a graduated payment mortgage where payments rise sharply for 5 years and then decline over the next 25 years because of decreasing mortgage insurance premiums, the first 5 years would be disclosed under the general rule in § 226.18(g) and the next 25 years according to the abbreviated schedule in § 226.18(g)(2).

3. *Effect on other disclosures.* Section 226.18(g)(2) applies only to the payment schedule disclosure. The actual amounts of payments must be taken into account in calculating and disclosing the finance charge and the annual percentage rate.

18(h) Total of payments.

1. *Disclosure required.* The total of payments must be disclosed using that term, along with a descriptive phrase similar to the one in the regulation. The descriptive explanation may be revised to reflect a variable rate feature with a brief phrase such as "based on the current annual percentage rate which may change."

2. *Calculation of total of payments.* The total of payments is the sum of the payments disclosed under § 226.18(g). For example, if the creditor disclosed a deferred portion of the downpayment as part of the payment schedule, that payment must be reflected in the total disclosed under this paragraph.

3. *Exception.* Footnote 44 permits creditors to omit disclosure of the total of payments in single-payment transactions. This exception does not apply to a transaction calling for a single payment of principal combined with periodic payments of interest.

4. *Demand obligations.* In demand obligations with no alternate maturity date, the creditor may omit disclosure of payment amounts under § 226.18(g)(1). In those transactions, the creditor need not disclose the total of payments.

18(i) Demand feature.

1. *Disclosure requirements.* The disclosure requirements of this provision apply not only to transactions payable on demand from the outset, but also to transactions that are not payable on demand at the time of consummation but convert to a demand status after a stated period. In demand obligations in which the disclosures are based on an assumed maturity of 1 year under § 226.17(c)(5), that fact must also be stated. Appendix H contains model clauses that may be used in making this disclosure.

2. *Covered demand features.* The type of demand feature triggering the disclosures required by § 226.18(i) includes only those demand features contemplated by the par-

ties as part of the legal obligation. For example, this provision does not apply to transactions that covert to a demand status as a result of the consumer's default. A due-on-sale clause is not considered a demand feature.

3. *Relationship to payment schedule disclosures.* As provided in § 226.18(g)(1), in demand obligations with no alternate maturity date, the creditor need only disclose the due dates or payment periods of any scheduled interest payments for the first year. If the demand obligation states an alternate maturity, however, the disclosed payment schedule must reflect that stated term; the special rule in § 226.18(g)(1) is not available.

18(j) Total sale price.

1. *Disclosure required.* In a credit sale transaction, the "total sale price" must be disclosed using that term, along with a descriptive explanation similar to the one in the regulation. For variable rate transactions, the descriptive phrase may, at the creditor's option, be modified to reflect the variable rate feature. For example, the descriptor may read: "The total cost of your purchase on credit, which is subject to change, including your downpayment of * * *." The reference to a downpayment may be eliminated in transactions calling for no downpayment.

2. *Calculation of total sale price.* The figure to be disclosed is the sum of the cash price, other charges added under § 226.18(b)(2), and the finance charge disclosed under § 226.18(d).

18(k) Prepayment.

1. *Disclosure required.* The creditor must give a definitive statement of whether or not a penalty will be imposed or a rebate will be given.

- The fact that no penalty will be imposed may not simply be inferred from the absence of a penalty disclosure; the creditor must indicate that prepayment will not result in a penalty.
- If a penalty or refund is possible for one type of prepayment, even though not for all, a positive disclosure is required. This applies to any type of prepayment, whether voluntary or involuntary as in the case of prepayments resulting from acceleration.
- Any difference in rebate or penalty policy, depending on whether prepayment is voluntary or not, must not be disclosed with the segregated disclosures.

2. *Rebate-penalty disclosure.* A single transaction may involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance (for example, mortgages with mortgage-guarantee insurance). In these cases, disclosures about both prepayment rebates and penalties are required. Sample form H-15 in appendix H illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary.

3. *Prepaid finance charge.* The existence of a prepaid finance charge in a transaction does not, by itself, require a disclosure under § 226.18(k). A prepaid finance charge is not considered a penalty under § 226.18(k)(1), nor does it require a disclosure under § 226.18(k)(2). At its option, however, a creditor may consider a prepaid finance charge to be under § 226.18(k)(2). If a disclosure is made under § 226.18(k)(2) with respect to a prepaid finance charge or other finance charge, the creditor may further identify that finance charge. For example, the disclosure may state that the borrower "will not be entitled to a refund of the prepaid finance charge" or some other term that describes the finance charge.

Paragraph 18(k)(1).

1. *Penalty.* This applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily. The term "penalty" as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. Items which are not penalties include, for example:

- Loan guarantee fees.
- Interim interest on a student loan.

However, a minimum finance charge is a penalty in a simple-interest transaction. (See the commentary to § 226.17(a)(1) regarding the disclosure of a minimum finance charge as directly related information.)

Paragraph 18(k)(2).

1. *Rebate of finance charge.* This applies to any finance charges that do not take account of each reduction in the principal balance of an obligation. This category includes, for example:

- Precomputed finance charges such as add-on charges.
- Charges that take account of some but not all reductions in principal, such as mortgage guarantee insurance assessed on the basis of an annual declining balance, when the principal is reduced on a monthly basis.

No description of the method of computing earned or unearned finance charges is required or permitted as part of the segregated disclosures under this section.

18(l) Late payment.

1. *Definition.* This paragraph requires a disclosure only if charges are added to individual delinquent installments by a creditor who otherwise considers the transaction ongoing on its original terms. Late payment charges do not include:

- The right of acceleration.

- Fees imposed for actual collection costs, such as repossession charges or attorney's fees.
- Deferral and extension charges.
- The continued accrual of simple interest at the contract rate after the payment due date. However, an increase in the interest rate is a late payment charge to the extent of the increase.

2. *Content of disclosure.* Many state laws authorize the calculation of late charges on the basis of either a percentage or a specified dollar amount, and permit imposition of the lesser or greater of the 2 charges. The disclosure made under § 226.18(l) may reflect this alternative. For example, stating that the charge in the event of a late payment is 5% of the late amount, not to exceed $5.00, is sufficient. Many creditors also permit a grace period during which no late charge will be assessed; this fact may be disclosed as directly related information. (See the commentary to § 226.17(a).)

18(m) Security interest.

1. *Purchase money transactions.* When the collateral is the item purchased as part of, or with the proceeds of, the credit transaction, § 226.18(m) requires only a general identification such as "the property purchased in this transaction." The creditor may give a more specific identification of the collateral, although only the abbreviated disclosure is necessary. Any transaction in which the credit is being used to purchase the collateral is considered a purchase money transaction and the abbreviated property identification may be used, whether the obligation is treated as a loan or a credit sale.

2. *Non-purchase money transactions.* In non-purchase money transactions, the property subject to the security interest must be identified by item or type. This disclosure is satisfied by a general disclosure of the category of property subject to the security interest, such as "household goods," "motor vehicles," or "securities." At the creditor's option, however, a more precise identification of the property or goods may be provided.

3. *Mixed collateral.* In some transactions in which the credit is used to purchase the collateral, the creditor may also take other property of the consumer as security. In those cases, a combined disclosure must be provided, consisting of the abbreviated property identification for the purchase money collateral (although more detail may be given, at the creditor's option) and a more specific identification of the other collateral.

4. *After-acquired property.* An after-acquired property clause is not a security interest to be disclosed under § 226.18(m).

5. *Spreader clause.* The fact that collateral for pre-existing credit with the institution is being used to secure the present obligation constitutes a security interest and must be disclosed. (Such security interests may be known as "spreader" or "dragnet" clauses, or as "cross-collateralization" clauses.) A specific identification of that collateral is unnecessary but a reminder of the interest arising from the prior indebtedness is required. The disclosure may be made by using language such as "collateral securing other loans with us may also secure this loan." At the creditor's option, a more specific description of the property involved may be given.

6. *Terms used in disclosure.* No specified terminology is required in disclosing a security interest. Although the disclosure may, at the creditor's option, use the term "security interest," the creditor may designate its interest by using, for example, "pledge," "lien," or "mortgage."

7. *Collateral from third party.* In certain transactions, the consumer's obligation may be secured by collateral belonging to a third party. For example, a loan to a student may be secured by an interest in the property of the student's parents. In such cases, the security interest is taken in connection with the transaction and must be disclosed, even though the property encumbered is owned by someone other than the consumer.

18(n) Insurance.

1. *Location.* This disclosure may, at the creditor's option, appear apart from the other disclosures. It may appear with any other information, including the amount financed itemization, any information prescribed by state law, or other supplementary material. When this information is disclosed with the other segregated disclosures, however, no additional explanatory material may be included.

18(o) Certain security interest charges.

1. *Format.* No special format is required for these disclosures; under § 226.4(e), taxes and fees paid to government officials with respect to a security interest may be aggregated, or may be broken down by individual charge. For example, the disclosure could be labelled "filing fees and taxes" and all funds disbursed for such purposes may be aggregated in a single disclosure. This disclosure may appear, at the creditor's option, apart from the other required disclosures. The inclusion of this information on a statement required under the Real Estate Settlement Procedures Act is sufficient disclosure for purposes of Truth in Lending.

18(p) Contract reference.

1. *Content.* Creditors may substitute, for the phrase "appropriate contract document," a reference to specific transaction documents in which the additional information is found, such as "promissory note" or "retail installment sale contract." A creditor may, at its option, delete inapplicable items in the contract reference, as for example

when the contract documents contain no information regarding the right of acceleration.

18(q) Assumption policy.

1. *Policy statement.* In many mortgages, the creditor cannot determine, at the time disclosure must be made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors such as the creditworthiness of the subsequent borrower, the potential for impairment of the lender's security, and execution of an assumption agreement by the subsequent borrower. In cases where uncertainty exists as to the future assumability of a mortgage, the disclosure under § 226.18(q) should reflect that fact. In making disclosures in such cases, the creditor may use phrases such as "subject to conditions," "under certain circumstances," or "depending on future conditions." The creditor may provide a brief reference to more specific criteria such as a due-on-sale clause, although a complete explanation of all conditions is not appropriate. For example, the disclosure may state, "Someone buying your home may be allowed to assume the mortgage on its original terms, subject to certain conditions, such as payment of an assumption fee." See comment 17(a)(1)-5 for an example for a reference to a due-on-sale clause.

2. *Original terms.* The phrase "original terms" for purposes of § 226.18(q) does not preclude the imposition of an assumption fee, but a modification of the basic credit agreement, such as a change in the contract interest rate, represents different terms.

18(r) Required deposit.

1. *Disclosure required.* The creditor must inform the consumer of the existence of a required deposit. (Appendix H provides a model clause that may be used in making that disclosure.) Footnote 45 describes 3 types of deposits that need not be considered required deposits. Use of the phrase "need not" permits creditors to include the disclosure even in cases where there is doubt as to whether the deposit constitutes a required deposit.

2. *Pledged account mortgages.* In these transactions, a consumer pledges as collateral funds that the consumer deposits in an account held by the creditor. The creditor withdraws sums from that account to supplement the consumer's periodic payments. Creditors may treat these pledged accounts as required deposits or they may treat them as consumer buydowns in accordance with the commentary to § 226.17(c)(1).

3. *Escrow accounts.* The escrow exception in footnote 45 applies, for example, to accounts for such items as maintenance fees, repairs, or improvements, whether in a realty or a nonrealty transaction. (See the commentary to § 226.17(c)(1) regarding the use of escrow accounts in consumer buydown transactions.)

4. *Interest-bearing accounts.* When a deposit earns at least 5 percent interest per year, no disclosure is required under § 226.18(r). This exception applies whether the deposit is held by the creditor or by a third party.

5. *Morris Plan transactions.* A deposit under a Morris Plan, in which a deposit account is created for the sole purpose of accumulating payments and this is applied to satisfy entirely the consumer's obligation in the transaction, is not a required deposit.

6. *Examples of amounts excluded.* The following are among the types of deposits that need not be treated as required deposits:

- Requirement that a borrower be a customer or a member even if that involves a fee or a minimum balance.
- Required property insurance escrow on a mobile home transaction.
- Refund of interest when the obligation is paid in full.
- Deposits that are immediately available to the consumer.
- Funds deposited with the creditor to be disbursed (for example, for construction) before the loan proceeds are advanced.
- Escrow of condominium fees.
- Escrow of loan proceeds to be released when the repairs are completed.

References

Statute: Section 128, the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320) and the Real Estate Settlement Procedures Act (12 U.S.C. 2602).

Other sections: Sections 226.2, 226.17, and Appendix H.

Other regulations: 12 CFR 545.6-2(a) and 12 CFR Part 29.

Previous regulation: Sections 226.4 and 226.8.

1981 changes: Five of the required disclosures must be explained to the consumer in a manner similar to the descriptive phrases shown in the regulation. A written itemization of the amount financed need not be provided unless the consumer requests it. The finance charge must be provided in all transactions, including real estate transactions, but must be shown only as a total amount. The disclosed finance charge is considered accurate if it is within a specified range.

The variable rate hypothetical is required in all variable rate transactions and may be either general or transaction-specific. The penalty and rebate disclosures in the event of prepayment have been modified and combined. The requirement of an explanation of how the rebates or penalties are computed has been eliminated. The late payment disclosure has also been narrowed to include only charges imposed before maturity for late payments.

The information required in the security interest disclosure has been decreased by the deletion of the type of security interest and a reduction in the property description requirement. The disclosure of the required deposit is limited to a statement that the annual percentage rate does not reflect the required deposit; the presence of a required deposit has no effect on the annual percentage rate.

Two disclosure requirements have been added: A reference to the contract documents for additional information and, in a residential mortgage transaction, a statement of the creditor's assumption policy.

Section 226.19—Certain Residential Mortgage Transactions

19(a) Time of disclosure.

1. *Coverage.* This section requires early disclosure of credit terms in residential mortgage transactions that are also subject to the Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X, administered by the Department of Housing and Urban Development (HUD). To be covered by this section, a transaction must be both a residential mortgage transaction under § 226.2(a) and a federally related mortgage loan under RESPA. "Federally related mortgage loan" is defined under RESPA (12 USC 2602) and Regulation X (24 CFR 3500.5(b)), and is subject to any interpretations by HUD.

2. *Timing and use of estimates.* Truth in Lending disclosures must be given (a) before consummation or (b) within three business days after the creditor receives the consumer's written application, whichever is earlier. The three-day period for disclosing credit terms coincides with the time period within which creditors subject to RESPA must provide good faith estimates of settlement costs. If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under § 226.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as "all numerical disclosures except the late-payment disclosure are estimates") instead of separately labelling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (See the Commentary to § 226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to § 226.17(a)(1).

3. *Written application.* Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a "written application" has been received. In general, Regulation X requires disclosures "to every person from whom the Lender receives or for whom it prepares a written application on an application form or forms normally used by the Lender for a Federally Related Mortgage Loan" (24 CFR 3500.6(a)). An application is received when it reaches the creditor in any of the ways applications are normally transmitted—by mail, hand delivery, or through an intermediary agent or broker. If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker.

4. *Exceptions.* The creditor may determine within the 3-day period that the application will not or cannot be approved on the terms requested, as, for example, when a consumer applies for a type or amount of credit that the creditor does not offer, or the consumer's application cannot be approved for some other reason. In that case, the creditor need not make the disclosures under this section. If the creditor fails to provide early disclosures and the transaction is later consummated on the original terms, the creditor will be in violation of this provision. If, however, the consumer amends the application because of the creditor's unwillingness to approve it on its original terms, no violation occurs for not providing disclosures based on the original terms. But the amended application is a new application subject to this section.

5. *Itemization of amount financed.* In many residential mortgage transactions, the itemization of the amount financed required by § 226.18(c) will contain items, such as origination fees or points, that also must be disclosed as part of the good faith estimates of settlement costs required under RESPA. Creditors furnishing the RESPA good faith estimates need not give consumers any itemization of the amount financed, either with the disclosures provided within 3 days after application or with the disclosures given at consummation or settlement.

19(b) Redisclosure required.

1. *Conditions for redisclosure.* Creditors must make new disclosures if the annual percentage rate at consummation differs from the estimate originally disclosed by more than ⅛ of 1 percentage point in regular transactions or ¼ of 1 percentage point in irregular transactions, as defined in § 226.22. The creditor must also redisclose if a variable rate feature is added to the credit terms after the original disclosures have

been made. The creditor has the option of redisclosing information under other circumstances, if it wishes to do so.

2. *Content of new disclosures.* If redisclosure is required, the creditor may provide a complete set of new disclosures, or may redisclose only the terms that vary from those originally disclosed. If the creditor chooses to provide a complete set of new disclosures, the creditor may but need not highlight the new terms, provided that the disclosures comply with the format requirements of § 226.17(a). If the creditor chooses to disclose only the new terms, all the new terms must be disclosed. For example, a different annual percentage rate will almost always produce a different finance charge, and often a new schedule of payments; all of these changes would have to be disclosed. If, in addition, unrelated terms such as the amount financed or prepayment penalty vary from those originally disclosed, the accurate terms must be disclosed. However, no new disclosures are required if the *only* inaccuracies involve estimates other than the annual percentage rate, and no variable rate feature has been added.

3. *Timing.* Redisclosures, when necessary, must be given no later than "consummation or settlement." "Consummation" is defined in § 226.2(a). "Date of settlement" is defined in Regulation X (24 CFR 3500.2(a)) and is subject to any interpretations issued under RESPA and Regulation X.

References

Statute: Section 128(b)(2) and the Real Estate Settlement Procedures Act (12 U.S.C. 2602).

Other sections: Sections 226.2, 226.17, and 226.22.

Other regulations: Regulation X (24 CFR 3500.2(a), 3500.5(b), and 3500.6(a)).

Previous regulation: None.

1981 changes: This section implements section 128(b)(2), a new provision that requires early disclosure of credit terms in certain mortgage transactions.

Section 226.20—Subsequent Disclosure Requirements

20(a) Refinancings.

1. *Definition.* A refinancing is a new transaction requiring a complete new set of disclosures. Whether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. In any form, the new obligation must completely replace the prior one.

- Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.
- A substitution of agreements that meets the refinancing definition will require new disclosures, even if the substitution does not substantially alter the prior credit terms.

2. *Exceptions.* A transaction is subject to § 226.20(a) only if it meets the general definition of a refinancing. Section 226.20(a) (1) through (5) lists 5 events that are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

3. *Variable rate.* If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, a renegotiable rate mortgage that was disclosed as a variable-rate transaction is not subject to new disclosure requirements when the variable-rate feature is invoked. However, even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

- Increases the rate based on a variable-rate feature that was not previously disclosed, or
- Adds a variable-rate feature to the obligation.

4. *Unearned finance charge.* In a transaction involving precomputed finance charges, the creditor must include in the finance charge on the refinanced obligation any unearned portion of the original finance charge that is not rebated to the consumer or credited against the underlying obligation. For example, in a transaction with an add-on finance charge, a creditor advances new money to a consumer in a fashion that extinguishes the original obligation and replaces it with a new one. The creditor neither refunds the unearned finance charge on the original obligation to the consumer nor credits it to the remaining balance on the old obligation. Under these circumstances, the unearned finance charge must be included in the finance charge on the new obligation and reflected in the annual percentage rate disclosed on refinancing. Accrued but unpaid finance charges are included in the amount financed in the new obligation.

5. *Coverage.* Section 226.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A "refinancing" by any other person is a new transaction under the regulation, not a refinancing under this section.

Paragraph 20(a)(1).

1. *Renewal.* This exception applies both to obligations with a single payment of principal and interest and to obligations with periodic payments of interest and a final payment of principal. In determining whether a new obligation replacing an old one is a renewal of the original terms or a refinancing, the creditor may consider it a renewal even if:

- Accrued unpaid interest is added to the principal balance.
- Changes are made in the terms of renewal resulting from the factors listed in § 226.17(c)(3).
- The principal at renewal is reduced by a curtailment of the obligation.

Paragraph 20(a)(2).

1. *Annual percentage rate reduction.* A reduction in the annual percentage rate with a corresponding change in the payment schedule is not a refinancing. A corresponding change in the payment schedule could include, for example, a change in the maturity or a reduction in the payment amount or the number of payments. If the annual percentage rate is subsequently increased (even though it remains below its original level) and the increase is effected in such a way that the old obligation is satisfied and replaced, new disclosures must then be made.

Paragraph 20(a)(3).

1. *Court agreements.* This exception includes, for example, agreements such as reaffirmations of debts discharged in bankruptcy, settlement agreements, and post-judgment agreements. (See the commentary to § 226.2(a)(14) for a discussion of court-approved agreements that are not considered "credit.")

Paragraph 20(a)(4).

1. *Workout agreements.* A workout agreement is not a refinancing unless the annual percentage rate is increased or additional credit is advanced beyond amounts already accrued plus insurance premiums.

Paragraph 20(a)(5).

1. *Insurance renewal.* The renewal of optional insurance added to an existing credit transaction is not a refinancing, assuming that appropriate Truth in Lending disclosures were provided for the initial purchase of the insurance.

20(b) Assumptions.

1. *General definition.* An assumption as defined in § 226.20(b) is a new transaction and new disclosures must be made to the subsequent consumer. An assumption under the regulation requires the following three elements:

- A residential mortgage transaction.
- An express acceptance of the subsequent consumer by the creditor.
- A written agreement.

The assumption of a nonexempt consumer credit obligation requires no disclosures unless all three elements are present. For example, an automobile dealer need not provide Truth in Lending disclosures to a customer who assumes an existing obligation secured by an automobile. However, a residential mortgage transaction with the elements described in § 226.20(b) is an assumption that calls for new disclosures; the disclosures must be given whether or not the assumption is accompanied by changes in the terms of the obligation. (See comment 2(a)(24)-5 for a discussion of assumptions that are not considered residential mortgage transactions.)

2. *Existing residential mortgage transaction.* A transaction may be a residential mortgage transaction as to one consumer and not to the other consumer. In that case, the creditor must look to the assuming consumer in determining whether a residential mortgage transaction exists. To illustrate:

- The original consumer obtained a mortgage to purchase a home for vacation purposes. The loan was not a residential mortgage transaction as to that consumer. The mortgage is assumed by a consumer who will use the home as a principal dwelling. As to that consumer, the loan is a residential mortgage transaction. For purposes of § 226.20(b), the assumed loan is an "existing residential mortgage transaction" requiring disclosures, if the other criteria for an assumption are met.

3. *Express agreement.* "Expressly agrees" means that the creditor's agreement must relate specifically to the new debtor and must unequivocally accept that debtor as a primary obligor. The following events are not construed to be express agreements between the creditor and the subsequent consumer:

- Approval of creditworthiness.
- Notification of a change in records.
- Mailing of a coupon book to the subsequent consumer.
- Acceptance of payments from the new consumer.

4. *Retention of original consumer.* The retention of the original consumer as an obligor in some capacity does not prevent the change from being an assumption, provided the new consumer becomes a primary obligor. But the mere addition of a guarantor to an obligation for which the original consumer remains primarily liable does not give rise to an assumption. However, if neither party is designated as the primary obligor but the creditor accepts payment from the subsequent consumer, an assumption exists for purposes of § 226.20(b).

5. *Status of parties.* Section 226.20(b) applies only if the previous debtor was a consumer and the obligation is assumed by an-

other consumer. It does not apply, for example, when an individual takes over the obligation of a corporation.

6. *Disclosures.* For transactions that are assumptions within this provision, the creditor must make disclosures based on the "remaining obligation." For example:

- The amount financed is the remaining principal balance plus any arrearages or other accrued charges from the original transaction.
- If the finance charge is computed from time to time by application of a percentage rate to an unpaid balance, in determining the amount of the finance charge and the annual percentage rate to be disclosed, the creditor should disregard any prepaid finance charges paid by the original obligor, but must include in the finance charge any prepaid finance charge imposed in connection with the assumption.
- If the creditor requires the assuming consumer to pay any charges as a condition of the assumption, those sums are prepaid finance charges as to that consumer, unless exempt from the finance charge under § 226.4.

If a transaction involves add-on or discount finance charges, the creditor may make abbreviated disclosures, as outlined in § 226.20(b)(1) through (5).

7. *Abbreviated disclosures.* The abbreviated disclosures permitted for assumptions of transactions involving add-on or discount finance charges must be made clearly and conspicuously in writing in a form that the consumer may keep. However, the creditor need not comply with the segregation requirement of § 226.17(a)(1). The terms "annual percentage rate" and "total of payments," when disclosed according to § 226.20(b) (4) and (5), are not subject to the description requirements of § 226.18 (e) and (h). The term "annual percentage rate" disclosed under § 226.20(b)(4) need not be more conspicuous than other disclosures.

References

Statute: None.

Other sections: Section 226.2.

Previous regulation: Section 226.8(j) through (l), and Interpretation Sections 226.807, 226.811, 226.814, and 226.817.

1981 changes: While the previous regulation treated virtually any change in terms as a refinancing requiring new disclosures, this regulation limits refinancings to transactions in which the entire original obligation is extinguished and replaced by a new one. Redisclosure is no longer required for deferrals or extensions.

The assumption provision retains the substance of § 226.8(k) and Interpretation § 226.807 of the previous regulation, but limits its scope to residential mortgage transactions.

Section 226.21—Treatment of Credit Balances

1. *Credit balance.* A credit balance arises whenever the creditor receives or holds funds in an account in excess of the total balance due from the consumer on that account. A balance might result, for example, from the debtor's paying off a loan by transmitting funds in excess of the total balance owed on the account, or from the early payoff of a loan entitling the consumer to a rebate of insurance premiums and finance charges. However, § 226.21 does not determine whether the creditor in fact owes or holds sums for the consumer. For example, if a creditor has no obligation to rebate any portion of precomputed finance charges on prepayment, the consumer's early payoff would not create a credit balance with respect to those charges. Similarly, nothing in this provision interferes with any rights the creditor may have under the contract or under state law with respect to set-off, cross collateralization, or similar provisions.

2. *Total balance due.* The phrase "total balance due" refers to the total outstanding balance. Thus, this provision does not apply where the consumer has simply paid an amount in excess of the payment due for a given period.

3. *Timing of refund.* The creditor may also fulfill its obligation under this section by:

- Refunding any credit balance to the consumer immediately.
- Refunding any credit balance prior to a written request from the consumer.
- Making a good faith effort to refund any credit balance before 6 months have passed. If that attempt is unsuccessful, the creditor need not try again to refund the credit balance at the end of the 6-month period.

Paragraph 21(b).

1. *Written requests—standing orders.* The creditor is not required to honor standing orders requesting refunds of any credit balance that may be created on the consumer's account.

Paragraph 21(c).

1. *Good faith effort to refund.* The creditor must take positive steps to return any credit balance that has remained in the account for over 6 months. This includes, if necessary, attempts to trace the consumer through the consumer's last known address or telephone number, or both.

2. *Good faith effort unsuccessful.* Section 226.21 imposes no further duties on the creditor if a good faith effort to return the balance is unsuccessful. The ultimate disposition of the credit balance (or any credit balance of $1 or less) is to be determined under other applicable law.

References

Statute: Section 165.

Other sections: None.

Previous regulation: None.

1981 changes: This section implements section 165 of the Act, which was expanded by the 1980 statutory amendments to apply to closed-end as well as open-end credit.

Section 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the annual percentage rate.

Paragraph 22(a)(1).

1. *Calculation method.* The regulation recognizes both the actuarial method and the United States Rule Method (U.S. Rule) as measures of an exact annual percentage rate. Both methods yield the same annual percentage rate when payment intervals are equal. They differ in their treatment of unpaid accrued interest.

2. *Actuarial method.* When no payment is made, or when the payment is insufficient to pay the accumulated finance charge, the actuarial method requires that the unpaid finance charge be added to the amount financed and thereby capitalized. Interest is computed on interest since in succeeding periods the interest rate is applied to the unpaid balance including the unpaid finance charge. Appendix J provides instructions and examples for calculating the annual percentage rate using the actuarial method.

3. *U.S. Rule.* The U.S. Rule produces no compounding of interest in that any unpaid accrued interest is accumulated separately and is not added to principal. In addition, under the U.S. Rule, no interest calculation is made until a payment is received.

4. *Basis for calculations.* When a transaction involves "step rates" or "split rates"—that is, different rates applied at different times or to different portions of the principal balance—a single composite annual percentage rate must be calculated and disclosed for the entire transaction. Assume, for example, a step-rate transaction in which a $10,000 loan is repayable in 5 years at 10 percent interest for the first 2 years, 12 percent for years 3 and 4, and 14 percent for year 5. The monthly payments are $210.71 during the first 2 years of the term, $220.25 for years 3 and 4, and $222.59 for year 5. The composite annual percentage rate, using a calculator with a "discounted cash flow analysis" or "internal rate of return" function, is 10.75 percent.

5. *Good faith reliance on faulty calculation tools.* Footnote 45a absolves a creditor of liability for an error in the annual percentage rate or finance charge that resulted from a corresponding error in a calculation tool used in good faith by the creditor. Whether or not the creditor's use of the tool was in good faith must be determined on a case-by-case basis, but the creditor must in any case have taken reasonable steps to verify the accuracy of the tool, including any instructions, before using it. Generally, the footnote is available only for errors directly attributable to the calculation tool itself, including software programs; it is not intended to absolve a creditor of liability for its own errors, or for errors arising from improper use of the tool, from incorrect data entry, or from misapplication of the law.

Paragraph 22(a)(2).

1. *Regular transactions.* The annual percentage rate for a regular transaction is considered accurate if it varies in either direction by not more than ⅛ of 1 percentage point from the actual annual percentage rate. For example, when the exact annual percentage rate is determined to be 10⅛%, a disclosed annual percentage rate from 10% to 10¼%, or the decimal equivalent, is deemed to comply with the regulation.

Paragraph 22(a)(3).

1. *Irregular transactions.* The annual percentage rate for an irregular transaction is considered accurate if it varies in either direction by not more than ¼ of 1 percentage point from the actual annual percentage rate. This tolerance is intended for more complex transactions that do not call for a single advance and a regular series of equal payments at equal intervals. The ¼ of 1 percentage point tolerance may be used, for example, in a construction loan where advances are made as construction progresses, or in a transaction where payments vary to reflect the consumer's seasonal income. It may also be used in transactions with graduated payment schedules where the contract commits the consumer to several series of payments in different amounts. It does not apply, however, to loans with variable rate features where the initial disclosures are based on a regular amortization schedule over the life of the loan, even though payments may later change because of the variable rate feature.

22(b) Computation tools.

Paragraph 22(b)(1).

1. *Board tables.* Volumes I and II of the Board's Annual Percentage Rate Tables provide a means of calculating annual percentage rates for regular and irregular transactions, respectively. An annual percentage rate computed in accordance with the instructions in the tables is deemed to comply with the regulation, even where use of the tables produces a rate that falls outside the general standard of accuracy. To illustrate:

- Volume I may be used for single advance transactions with completely regular payment schedules or with payment schedules that are regular except for an odd first payment, odd first period or odd final payment. When used for a transaction with a large final balloon payment, Volume I may produce a rate that is considerably higher than the exact rate produced using a computer program based directly on Appendix J. However, the Volume I rate—produced using certain adjustments in that volume—is considered to be in compliance.

Paragraph 22(b)(2).

1. *Other calculation tools.* Creditors need not use the Board tables in calculating the annual precentage rates. Any computation tools may be used, so long as they produce annual percentage rates within ⅛ or ¼ of 1 percentage point, as applicable, of the precise actuarial or U.S. Rule annual percentage rate.

22(c) Single add-on rate transactions.

1. *General rule.* Creditors applying a single add-on rate to all transactions up to 60 months in length may disclose the same annual percentage rate for all those transactions, although the actual annual percentage rate varies according to the length of the transaction. Creditors utilizing this provision must show the highest of those rates. For example:

- An add-on rate of 10 percent converted to an annual percentage rate produce the following actual annual percentage rates at various maturities: at 3 months, 14.94 percent; at 21 months, 18.18 percent; and at 60 months, 17.27 percent. The creditor must disclose an annual percentage rate of 18.18 percent (the highest annual percentage rate) for any transaction up to 5 years, even though that rate is precise only for a transaction of 21 months.

22(d) Certain transactions involving ranges of balances.

1. *General rule.* Creditors applying a fixed dollar finance charge to all balances within a specified range of balances may understate the annual percentage rate by up to 8 percent of that rate, by disclosing for all those balances the annual percentage rate computed on the median balance within that range. For example:

- If a finance charge of $9 applies to all balances between $91 and $100, an annual percentage rate of 10 percent (the rate on the median balance) may be disclosed as the annual percentage rate for all balances, even though a $9 finance charge applied to the lowest balance ($91) would actually produce an annual percentage rate of 10.7 percent.

References

Statute: Section 107.

Other sections: Section 226.17(c)(4) and Appendix J.

Previous regulation: Section 226.5(b) through (e).

1981 changes: The section now provides a larger tolerance (¼ of 1 percentage point) for irregular transactions.

Section 226.23—Right of Rescission

1. *Transactions not covered.* Credit extensions that are not subject to the regulation are not covered by § 226.23 even if a customer's principal dwelling is the collateral securing the credit. For example, the right of rescission does not apply to a business purpose loan, even though the loan is secured by the customer's principal dwelling.

23(a) Consumer's right to rescind.

Paragraph 23(a)(1).

1. *Security interest arising from transaction.* In order for the right of rescission to apply, the security interest must be retained as part of the credit transaction. For example:

- A security interest that is acquired by a contractor who is also extending the credit in the transaction.
- A mechanic's or materialman's lien that is retained by a subcontractor or supplier of the contractor-creditor, even when the latter has waived its own security interest in the consumer's home.

The security interest is not part of the credit transaction and therefore the transaction is not subject to the right of rescission when, for example:

- A mechanic's or materialman's lien is obtained by a contractor who is not a party to the credit transaction but is merely paid with the proceeds of the consumer's unsecured bank loan.
- All security interests that may arise in connection with the credit transaction are validly waived.
- The creditor obtains a lien and completion bond that in effect satisfies all liens against the consumer's principal dwelling as a result of the credit transaction.

Although liens arising by operation of law are not considered security interests for purposes of disclosure under § 226.2, that section specifically includes them in the definition for purposes of the right of rescission. Thus, even though an interest in the consumer's principal dwelling is not a required disclosure under § 226.18(m), it may still give rise to the right of rescission.

2. *Consumer.* To be a consumer within the meaning of § 226.2, that person must at least have an ownership interest in the dwelling that is encumbered by the creditor's security interest, although that person need not be a signatory to the credit agreement. For example, if only one spouse signs a credit contract, the other spouse is a consumer if the ownership interest of that spouse is subject to the security interest.

3. *Principal dwelling.* A consumer can only have *one* principal dwelling at a time. A vacation or other second home would not be a principal dwelling. A transaction secured by a second home (such as a vacation home) that is not currently being used as the consumer's principal dwelling is not rescindable, even if the consumer intends to reside there in the future. When a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within one year or upon completion of construction, the new dwelling is considered the principal dwelling when it secures the acquisition or construction loan. Dwelling, as defined in § 226.2, includes structures that are classified as personalty under state law. For example, a transaction secured by a mobile home, trailer or houseboat used as the consumer's principal dwelling may be rescindable.

4. *Special rule for principal dwelling.* When the consumer is acquiring or constructing a new principal dwelling, *any* loan secured by the equity in the consumer's current principal dwelling (for example, a bridge loan) is still subject to the right of rescission regardless of the purpose of that loan.

5. *Addition of a security interest.* Under footnote 47, the addition of a security interest to a pre-existing obligation is rescindable. The right of rescission applies only to the added security interest, however, and not to the original obligation. In those situations, only the § 226.23(b) notice need be delivered, not new material disclosures; the rescission period will begin to run from the delivery of the notice.

Paragraph 23(a)(2).

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.23(b). Whatever the means of sending the notification of rescission—mail, telegram or other witten means—the time period for the creditor's performance under § 226.23(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.23(b).

Paragraph 23(a)(3).

1. *Rescission period.* The period within which the consumer may exercise the right to rescind runs for 3 business days from the last of 3 events:

- Consummation of the transaction.
- Delivery of all material disclosures.
- Delivery to the consumer of the required rescission notice.

For example, if a transaction is consummated on Friday, June 1, and the disclosures and notice of the right to rescind were given on Thursday, May 31, the rescission period will expire at midnight of the third business day after June 1—that is, Tuesday, June 5. In another example, if the disclosures are given and the transaction consummated on Friday, June 1, and the rescission notice is given on Monday, June 4, the rescission period expires at midnight of the third business day after June 4—that is, Thursday, June 7. The consumer must place the rescission notice in the mail, file it for telegraphic transmission, or deliver it to the creditor's place of business within that period in order to exercise the right.

2. *Material disclosures.* Footnote 48 sets forth the material disclosures that must be provided before the rescission period can begin to run. Failure to provide information regarding the annual pecentage rate also includes failure to inform the consumer of the existence of a variable rate feature. Failure to give the other required disclosures does not prevent the running of the rescission period, although that failure may result in civil liability or administrative sanctions.

3. *Unexpired right of rescission.* When the creditor has failed to take the action necessary to start the three-business day rescission period running, the right to rescind automatically lapses on the occurrence of the earliest of the following three events:

- The expiration of three years after consummation of the transaction.
- Transfer of all the consumer's interest in the property.
- Sale of the consumer's interest in the property, including a transaction in which the consumer sells the dwelling and takes back a purchase money note and mortgage or retains legal title through a device such as an installment sale contract.

Transfer of all the consumers' interest includes such transfers as bequests and gifts. A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind. As provided in section 125 of the Act, the three-year limit may be extended by an administrative proceeding to enforce the provisions of this section. A partial transfer of the consumer's interest, such as a transfer bestowing co-ownership on a spouse, does not terminate the right of rescission.

Paragraph 23(a)(4).

1. *Joint owners.* When more than one consumer has the right to rescind a transaction, any of them may exercise that right and cancel the transaction on behalf of all. For example, if both husband and wife have the right to rescind a transaction, either spouse acting alone may exercise the right and both are bound by the rescission.

23(b) Notice of right to rescind.

1. *Who receives notice.* Each consumer entitled to rescind must be given:

- Two copies of the rescission notice.
- The material disclosures.

In a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive 2 copies of the rescission notice and one copy of the disclosures.

2. *Format.* The notice must be on a separate piece of paper, but may appear with other information such as the itemization of the amount financed. The material must be clear and conspicuous, but no minimum type size or other technical requirements are imposed. The notices in Appendix H provide models that creditors may use in giving the notice.

3. *Content.* The notice must include all of the information outlined in § 226.23(b) (1) through (5). The requirement in § 226.23(b) that the transaction be identified may be met by providing the date of the transaction. The creditor may provide a separate form that the consumer may use to exercise the right of rescission, or that form may be combined with the other rescission disclosures, as illustrated in Appendix H. The notice may include additional information related to the required information, such as:

- A description of the property subject to the security interest.
- A statement that joint owners may have the right to rescind and that a rescission by one is effective for all.
- The name and address of an agent of the creditor to receive notice of rescission.

4. *Time of providing notice.* The notice required by § 226.23(b) need not be given before consummation of the transaction. The creditor may deliver the notice after the transaction is consummated, but the rescission period will not begin to run until the notice is given. For example, if the creditor provides the notice on May 15, but disclosures were given and the transaction was consummated on May 10, the 3-business day rescission period will run from May 15.

23(c) Delay of creditor's performance.

1. *General rule.* Until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, the creditor must not, either directly or through a third party:

- Disburse loan proceeds to the consumer.
- Begin performing services for the consumer.
- Deliver materials to the consumer.

2. *Escrow.* The creditor may disburse loan proceeds during the rescission period in a valid escrow arrangement. The creditor may not, however, appoint the consumer as "trustee" or "escrow agent" and distribute funds to the consumer in that capacity during the delay period.

3. *Permissible actions.* Section 226.23(c) does not prevent the creditor from taking other steps during the delay, short of beginning actual performance. The creditor may, for example:

- Prepare the loan check.
- Perfect the security interest.
- Prepare to discount or assign the contract to a third party.
- Accrue finance charges during the delay period.

4. *Delay beyond rescission period.* The creditor must wait until it is reasonably satisfied that the consumer has not rescinded. For example, the creditor may satisfy itself by doing one of the following:

- Waiting a reasonable time after expiration of the rescission period to allow for delivery of a mailed notice.
- Obtaining a written statement from the consumer that the right has not been exercised.

When more than one consumer has the right to rescind, the creditor cannot reasonably rely on the assurance of only one consumer, because other consumers may exercise the right.

23(d) Effects of rescission.

Paragraph 23(d)(1).

1. *Termination of security interest.* Any security interest giving rise to the right of rescission becomes void when the consumer exercises the right of rescission. The security interest is automatically negated regardless of its status and whether or not it was recorded or perfected. Under § 226.23(d)(2), however, the creditor must take any action necessary to reflect the fact that the security interest no longer exists.

Paragraph 23(d)(2).

1. *Refunds to consumer.* The consumer cannot be required to pay any amount in the form of money or property either to the creditor or to a third party as part of the credit transaction. Any amounts of this nature already paid by the consumer must be refunded. "Any amount" includes finance charges already accrued, as well as other charges such as application and commitment fees or fees for a title search or appraisal, whether paid to the creditor, paid directly to a third party, or passed on from the creditor to the third party. It is irrelevant that these amounts may not represent profit to the creditor.

2. *Amounts not refundable to consumer.* Creditors need not return any money given by the consumer to a third party outside of the credit transaction, such as costs incurred for a building permit or for a zoning variance. Similarly, the term "any amount" does not apply to any money or property given by the creditor to the consumer; those

amounts must be tendered by the consumer to the creditor under § 226.23(d)(3).

3. *Reflection of security interest termination.* The creditor must take whatever steps are necessary to indicate that the security interest is terminated. Those steps include the cancellation of documents creating the security interest, and the filing of release or termination statements in the public record. In a transaction involving subcontractors or suppliers that also hold security interests related to the credit transaction, the creditor must insure that the termination of their security interests is also reflected. The 20-day period for the creditor's action refers to the time within which the creditor must begin the process. It does not require all necessary steps to have been completed within that time, but the creditor is responsible for seeing the process through to completion.

Paragraph 23(d)(3).

1. *Property exchange.* Once the creditor has fulfilled its obligations under § 226.23(d)(2), the consumer must tender to the creditor any property or money the creditor has already delivered to the consumer. At the consumer's option, property may be tendered at the location of the property. For example, if lumber or fixtures have been delivered to the consumer's home, the consumer may tender them to the creditor by making them available for pick-up at the home, rather than physically returning them to the creditor's premises. Money already given to the consumer *must* be tendered at the creditor's place of business.

2. *Reasonable value.* If returning the property would be extremely burdensome to the consumer, the consumer may offer the creditor its reasonable value rather than returning the property itself. For example, if building materials have already been incorporated into the consumer's dwelling, the consumer may pay their reasonable value.

Paragraph 23(d)(4).

1. *Modifications.* The procedures outlined in § 226.23(d) (2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made.

23(e) Consumer's waiver of right to rescind.

1. *Need for waiver.* To waive the right to rescind, the consumer must have a bona fide personal financial emergency that must be met before the end of the rescission period. The existence of the consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the right of rescission.

2. *Procedure.* To waive or modify the right to rescind, the consumer must give a written statement that specifically waives or modifies the right, and also includes a brief description of the emergency. Each consumer entitled to rescind must sign the waiver statement. In a transaction involving multiple consumers, such as a husband and wife using their home as collateral, the waiver must bear the signatures of both spouses.

23(f) Exempt transactions.

1. *Residential mortgage transaction.* Any transaction to construct or acquire a principal dwelling, whether considered real or personal property, is exempt. (See the commentary to § 226.23(a).) For example, a credit transaction to acquire a mobile home or houseboat to be used as the consumer's principal dwelling would not be rescindable.

2. *Lien status.* The lien status of the mortgage is irrelevant for purposes of the exemption in § 226.23(f)(1); the fact that a loan has junior lien status does not by itself preclude application of this exemption. For example, a home buyer may assume the existing first mortgage and create a second mortgage to finance the balance of the purchase price. Such a transaction would not be rescindable.

3. *Combined-purpose transaction.* A loan to acquire a principal dwelling and make improvements to that dwelling is exempt if treated as one transaction. If, on the other hand, the loan for the acquisition of the principal dwelling and the subsequent advances for improvements are treated as more than one transaction, then only the transaction that finances the acquisition of that dwelling is exempt.

4. *New advances.* The exemption in § 226.23(f)(2) applies only to refinancings or consolidations by the original creditor. If the transaction involves the advance of new money, then only the amount of the new money is rescindable. For example, if the sum of the outstanding principal balance plus the earned finance charge is $1,000 and the new amount financed is $1,000, then the refinancing would be exempt. On the other hand, if the new amount financed exceeds $1,000, then the amount in excess of that $1,000 would be rescindable. A model rescission notice applicable to transactions involving new money appears in Appendix H.

5. *State creditors.* Cities and other political subdivisions of states acting as creditors are not exempted from this section.

6. *Multiple advances.* Just as new disclosures need not be made for subsequent advances when treated as one transaction, no new rescission rights arise so long as the appropriate notice and disclosures are given at the outset of the transaction. For example, the creditor extends credit for home improvements secured by the consumer's principal dwelling, with advances made as repairs progress. As permitted by § 226.17(c)(6), the creditor makes a single set of disclosures at the beginning of the

construction period, rather than separate disclosures for each advance. The right of rescission does not arise with each advance. However, if the advances are treated as separate transactions, the right of rescission applies to each advance.

7. *Spreader clauses.* When the creditor holds a mortgage or deed of trust on the consumer's principal dwelling and that mortgage or deed of trust contains a "spreader clause," subsequent loans made are separate transactions and are subject to the right of rescission. Those loans are rescindable unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent transactions.

8. *Converting open-end to closed-end credit.* Under certain state laws, consummation of a closed-end credit transaction may occur at the time a consumer enters into the initial open-end credit agreement. As provided in the commentary to § 226.17(b), closed-end credit disclosures may be delayed under these circumstances until the conversion of the open-end account to a closed-end transaction. In accounts secured by the consumer's principal dwelling, no new right of rescission arises at the time of conversion, assuming that the right of rescission was previously provided on the open-end account pursuant to § 226.15.

References

Statute: Sections 113, 125, and 130.

Other sections: Section 226.2 and Appendix H.

Previous regulation: Section 226.9.

1981 changes: The right to rescind applies not only to real property used as the consumer's principal dwelling, but to personal property as well. The regulation provides no specific text or format for the notice of the right to rescind.

Section 226.24—Advertising

1. *Clear and conspicuous standard.* This section is subject to the general "clear and conspicous" standard for this subpart but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisment. For example, a merchandise tag that is an advertisement under the regulation complies with this section if the necessary credit terms are on both sides of the tag, so long as each side is accessible.

24(a) Actually available terms.

1. *General rule.* To the extent that an advertisement mentions specific credit terms, it may state only those terms that the creditor is actually prepared to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. This provision is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available. For example, a creditor may advertise terms that will be offered for only a limited period, or terms that will become available at a future date.

24(b) Advertisment of rate of finance charge.

1. *Annual percentage rate.* Advertised rates must be stated in terms of an "annual percentage rate," as defined in § 226.22. Even though state or local law permits the use of add-on, discount, time-price differential, or other methods of stating rates, advertisements must state them as annual percentage rates. Unlike the transactional disclosure of the annual percentage rate under § 226.18(e), the advertised annual percentage rate need not include a descriptive explanation of the term. The advertisement must state that the rate is subject to increase after consummation if that is the case, but the advertisement need not describe the rate increase, its limits, or how it would affect the payment schedule. As under § 226.18(f), relating to disclosure of a variable rate, the rate increase disclosure requirement in this provision does not apply to any rate increase due to delinquency (including late payment), default, acceleration, assumption, or transfer of collateral.

2. *Simple or periodic rates.* The advertisement may not simultaneously state any other rate, except that a simple annual rate or periodic rate applicable to an unpaid balance may appear along with (but not more conspicuously than) the annual percentage rate. For example:

- In an advertisement for real estate, a simple interest rate may be shown in the same type size as the annual percentage rate for the advertised credit.

3. *Buydowns.* When a third party (such as a seller) or a creditor wishes to promote the availability of reduced interest rates (consumer or seller buydowns), the advertised annual percentage rate must be determined in accordance with the rules in the commentary to § 226.17(c) regarding the basis of transactional disclosures for buydowns. The seller or creditor may advertise the reduced simple interest rate, provided the advertisement shows the limited term to which the reduced rate applies and states the simple interest rate applicable to the balance of the term. The advertisement may also show the effect of the buydown agreement on the payment schedule for the buydown period without triggering the additional disclosures under § 226.24(c)(2). For example, the advertisement may state that "with this buydown arrangement, your monthly payments for the first 3 years of the mortgage term

will be only $350" or "this buydown arrangement will reduce your monthly payments for the first 3 years of the mortgage term by $150."

4. *Effective rates.* In some transactions the consumer's payments may be based upon an interest rate lower than the rate at which interest is accruing. The lower rate may be referred to as the effective rate, payment rate or qualifying rate. A creditor or seller may advertise such rates by stating: The term of the reduced payment schedule, the interest rate upon which the reduced payments are calculated, the rate at which the interest is in fact accruing, and the annual percentage rate. The advertised annual percentage rate that must accompany this rate must take into account the interest that will accrue but will not be paid during this period. For example, an advertisement may state "An effective first year interest rate of 10 percent. Interest being earned at 14 percent. Annual percentage rate 15 percent."

5. *Discounted variable-rate transactions.* The advertised annual percentage rate for discounted variable-rate transactions must be determined in accordance with comment 18(f)-8 regarding the basis of transactional disclosures for such financing. A creditor or seller may promote the availability of the initial rate reduction in such transactions by advertising the reduced initial rate, provided the advertisement shows the limited term to which the reduced rate applies.

- Limits or caps on periodic rate or payment adjustments need not be stated. To illustrate using the second example in comment 18(f)-8, the fact that the rate is presumed to be 11 percent in the second year and 12 percent for the remaining 28 years need not be included in the advertisement.
- The advertisement may also show the effect of the discount on the payment schedule for the discount period without triggering the additional disclosures under § 226.24(c). For example, the advertisement may state that "with this discount, your monthly payments for the first year of the mortgage term will be only $577" or "this discount will reduce your monthly payments for the first year of the mortgage term by $223."

24(c) Advertisement of terms that require additional disclosures.

1. *General rule.* Under § 226.24(c)(1), whenever certain triggering terms appear in credit advertisements, the additional credit terms enumerated in § 226.24(c)(2) must also appear. These provisions apply even if the triggering term is not stated explicitly, but may be readily determined from the advertisement. For example, an advertisement may state "80% financing available," which is in fact indicating that a 20% downpayment is required.

Paragraph 24(c)(1).

1. *Downpayment.* The dollar amount of a downpayment or a statement of the downpayment as a percentage of the price requires further information. By virtue of the definition of "downpayment" in § 226.2, this triggering term is limited to credit sale transactions. It includes such statements as:

- "Only 5% down."
- "As low as $100 down."
- "Total move-in costs of $800."

This provision applies only if a downpayment is actually required; statements such as "no downpayment" or "no trade-in required" do not trigger the additional disclosures under this paragraph.

2. *Payment period.* The number of payments required or the total period of repayment includes such statements as:

- "48-month payment terms."
- "30-year mortgage."
- "Repayment in as many as 36 monthly installments."

But it does not include such statements as "pay weekly," "monthly payment terms arranged," or "take years to repay," since these statements do not indicate a time period over which a loan may be financed.

3. *Payment amount.* The dollar amount of any payment includes statements such as:

- "Payable in installments of $103."
- "$25 weekly."
- "$1,200 balance payable in 10 equal installments."

In the last example, the amount of each payment is readily determinable, even though not explicitly stated. But statements such as "monthly payments to suit your needs" or "regular monthly payments" are not covered.

4. *Finance charge.* The dollar amount of the finance charge or any portion of it includes statements such as:

- "$500 total cost of credit."
- "$2 monthly carrying charge."
- "$50,000 mortgages, 2 points to the borrower."

In the last example, the $1,000 prepaid finance charge can be readily determined from the information given. Statements of the annual percentage rate or statements that there is no particular charge for credit (such as "no closing costs") are not triggering terms under this paragraph.

Paragraph 24(c)(2).

1. *Disclosure of downpayment.* The total downpayment as a dollar amount or percentage must be shown, but the word "downpayment" need not be used in making this disclosure. For example, "10% cash required from buyer" or "credit terms require minimum $100 trade-in" would suffice.

2. *Disclosure of repayment terms.* While the phrase "terms of repayment" generally has the same meaning as the "payment

schedule" required to be disclosed under § 226.18(g), § 226.24(c)(2)(ii) provides greater flexibility to creditors in making this disclosure for advertising purposes. Repayment terms may be expressed in a variety of ways in addition to an exact repayment schedule; this is particularly true for advertisements that do not contemplate a single specific transaction. For example:

- A creditor may use a unit-cost approach in making the required disclosure, such as "48 monthly payments of $27.83 per $1,000 borrowed."
- In an advertisement for credit secured by a dwelling, when any series of payments varies because of a graduated payment feature or because of the inclusion of mortgage insurance premiums, a creditor may state the number and timing of payments, the amounts of the largest and smallest of those payments, and the fact that other payments will vary between those amounts.

3. *Annual percentage rate.* The advertisement must also state, if applicable, that the annual percentage rate is subject to increase after consummation.

4. *Use of examples.* Footnote 49 authorizes the use of illustrative credit transactions to make the necessary disclosures under § 226.24(c)(2). That is, where a range of possible combinations of credit terms is offered, the advertisement may use examples of typical transactions, so long as each example contains all of the applicable terms required by § 226.24(c). The examples must be labelled as such and must reflect representative credit terms that are made available by the creditor to present and prospective customers.

24(d) Catalogs and multiple-page advertisements.

1. *Definition.* The multiple-page advertisements to which this section refers are advertisements consisting of a series of sequentially numbered pages—for example, a supplement to a newspaper. A mailing consisting of several separate flyers or pieces of promotional material in a single envelope does not constitute a single multiple-page advertisement for purposes of § 226.24(d).

2. *General.* Section 226.24(d) permits creditors to put credit information together in one place in a catalog or multiple-page advertisement. The rule applies only if the catalog or multiple-page advertisement contains one or more of the triggering terms from § 226.24(c)(1). A list of different annual percentage rates applicable to different balances, for example, does not trigger further disclosures under § 226.24(c)(2) and so is not covered by § 226.24(d).

3. *Representative examples.* The table or schedule must state all the necessary information for a representative sampling of amounts of credit. This must reflect amounts of credit the creditor actually offers, up to and including the higher-priced items. This does not mean that the chart must make the disclosures for the single most expensive item the seller offers, but only that the chart cannot be limited to information about less expensive sales when the seller commonly offers a distinct level of more expensive goods or services. The range of transactions shown in the table or schedule in a particular catalog or multiple-page advertisement need not exceed the range of transactions actually offered in that advertisement.

References

Statute: Sections 141, 142, and 144.

Other sections: Sections 226.2, 226.4, and 226.22.

Previous regulation: Section 226.10 (a), (b), and (d).

1981 changes: This section retains the advertising rules in a form very similar to the previous regulation, but with certain changes to reflect the 1980 statutory amendments. For example, if triggering terms appear in any advertisement, the additional disclosures required no longer include the cash price. The special rule for FHA section 235 financing has been eliminated, as well as the rule for advertising credit payable in more than four installments with no identified finance charge. Interpretation § 226.1002, requiring disclosure of representative amounts of credit in catalogs and multiple-page advertisements, has been incorporated in simplified form in § 226.24(d).

Unlike the previous regulation, if the advertised annual percentage rate is subject to increase, that fact must now be disclosed.

SUBPART D—MISCELLANEOUS

Section 226.25—Record Retention

25(a) General rule.

1. *Evidence of required actions.* The creditor must retain evidence that it performed the required actions as well as made the required disclosures. This includes, for example, evidence that the creditor properly handled adverse credit reports in connection with amounts subject to a billing dispute under § 226.13, and properly handled the refunding of credit balances under §§ 226.11 and 226.21.

2. *Methods of retaining evidence.* Adequate evidence of compliance does not necessarily mean actual paper copies of disclosure statements or other business records. The evidence may be retained on microfilm, microfiche, or by any other method that reproduces records accurately (including computer programs). The creditor need retain only enough information to reconstruct the required disclosures or other records. Thus, for example, the creditor need not retain

each open-end periodic statement, so long as the specific information on each statement can be retrieved.

References

Statute: Sections 105 and 108.

Other sections: Appendix I.

Previous regulation: Section 226.6(i).

1981 changes: Section 226.25 substitutes a uniform 2-year record-retention rule for the previous requirement that certain creditors retain records through at least one compliance examination. It also states more explicitly that the record-retention requirements apply to evidence of required actions.

Section 226.26—Use of Annual Percentage Rate in Oral Disclosures

1. *Application of rules.* The restrictions of § 226.26 apply only if the creditor chooses to respond orally to the consumer's request for credit cost information. Nothing in the regulation requires the creditor to supply rate information orally. If the creditor volunteers information (including rate information) through oral solicitations directed generally to prospective customers, as through a telephone solicitation, those communications may be advertisements subject to the rules in §§ 226.16 and 226.24.

26(a) Open-end credit.

1. *Information that may be given.* The creditor may state periodic rates in addition to the required annual percentage rate, but it need not do so. If the annual percentage rate is unknown because transaction charges, loan fees, or similar finance charges may be imposed, the creditor must give the corresponding annual percentage rate (that is, the periodic rate multiplied by the number of periods in a year, as described in §§ 226.6(a)(2) and 226.7(d)). In such cases, the creditor may, but need not, also give the consumer information about other finance charges and other charges.

26(b) Closed-end credit.

1. *Information that may be given.* The creditor may state other annual or periodic rates that are applied to an unpaid balance, along with the required annual percentage rate. This rule permits disclosure of a simple interest rate, for example, but not an add-on, discount, or similar rate. If the creditor cannot give a precise annual percentage rate in its oral response because of variables in the transaction, it must give the annual percentage rate for a comparable sample transaction; in this case, other cost information may, but need not, be given. For example, the creditor may be unable to state a precise annual percentage rate for a mortgage loan without knowing the exact amount to be financed, the amount of loan fees or mortgage insurance premiums, or similar factors. In this situation, the creditor should state an annual percentage rate for a sample transaction; it may also provide information about the consumer's specific case, such as the contract interest rate, points, other finance charges, and other charges.

References

Statute: Section 146.

Other sections: Sections 226.6(a)(2) and 226.7(d).

Previous regulation: Interpretation § 226.101.

1981 changes: This section implements amended section 146 of the Act, which added a provision dealing with oral disclosures, and incorporates Interpretation § 226.101.

Section 226.27—Spanish Language Disclosures

1. *Subsequent disclosures.* If a creditor in Puerto Rico provides initial disclosures in Spanish, subsequent disclosures need not be in Spanish. For example, if the creditor gave Spanish-language initial disclosures, periodic statements and change-in-terms notices may be made in English.

2. *Permissible uses.* If a creditor other than in Puerto Rico provides translations of the required disclosures—either because it is required to do so by state, federal, or local law, or because it chooses to do so—the translations are not inconsistent per se with the disclosures under this regulation and they may be provided as additional information. In both cases, the English language disclosures required by this regulation must be clear and conspicuous, and the closed-end disclosures in English must be properly segregated in accordance with § 226.17(a)(1).

References

Statute: None.

Other sections: None.

Previous regulation: Section 226.6(a).

1981 changes: No substantive change.

Section 226.28—Effect on State Laws

28(a) Inconsistent disclosure requirements

1. *General.* There are 3 sets of preemption criteria: 1 applies to the general disclosure and advertising rules of the regulation, and 2 apply to the credit billing provisions. Section 226.28 also provides for Board determinations of preemption.

2. *Rules for chapters 1, 2, and 3.* The standard for judging whether State laws that cover the types of requirements in chapters 1 (General provisions), 2 (Credit transactions), and 3 (Credit advertising) of the Act are inconsistent and therefore preempted, is contradiction of the Federal law. Examples of laws that would be preempted include:

- A State law that requires use of the term "finance charge," but defines the term to include fees that the Federal law excludes, or to exclude fees the Federal law includes.
- A State law that requires a label such as "nominal annual interest rate" to be used for what the Federal law calls the "annual percentage rate."

3. *Laws not contradictory to chapters 1, 2, and 3.* Generally, State law requirements that call for the disclosure of items of information not covered by the Federal law, or that require more detailed disclosures, do not contradict the Federal requirements. Examples of laws that are not preempted include:

- A State law that requires disclosure of the minimum periodic payment for open-end credit, even though not required by § 226.7.
- A State law that requires contracts to contain warnings such as: "Read this contract before you sign. Do not sign if any spaces are left blank. You are entitled to a copy of this contract."

Similarly, a State law that requires itemization of the amount financed does not automatically contradict the permissive itemization under § 226.18(c). However, a State law requirement that the itemization appear with the disclosure of the amount financed in the segregated closed-end credit disclosures is inconsistent, and this location requirement would be preempted.

4. *Creditor's options.* Before the Board makes a determination about a specific State law, the creditor has certain options. Since the prohibition against giving the State disclosures does not apply until the Board makes its determination, the creditor may choose to give State disclosures until the Board formally determines that the State law is inconsistent. (The Board will provide sufficient time for creditors to revise forms and procedures as necessary to conform to its determinations.)

- Under this first approach, as in all cases, the Federal disclosures must be clear and conspicuous, and the closed-end disclosures must be properly segregated in accordance with § 226.17(a)(1).
- This ability to give State disclosures relieves any uncertainty that the creditor might have prior to Board determinations of inconsistency.

As a second option, the creditor may apply the preemption standards to a State law, conclude that it is inconsistent, and choose not to give the state-required disclosures. However, nothing in § 226.28(a) provides the creditor with immunity for violations of State law if the creditor chooses *not* to make State disclosures and the Board later determines that the State law is not preempted.

5. *Rules for correction of billing errors and regulation of credit reports.* The preemption criteria for the fair credit billing provisions set forth in § 226.28 have 2 parts. With respect to the rules on correction of billing errors and regulation of credit reports (which are in § 226.13), § 226.28(a)(2)(i) provides that a State law is inconsistent and preempted if its requirements are different from the Federal law. An exception is made, however, for State laws that allow the consumer to inquire about an account and require the creditor to respond to such inquiries beyond the time limits in the Federal law. Such a State law is not preempted with respect to the extra time period. For example, § 226.13 requires the consumer to submit a written notice of billing error within 60 days after transmittal of the periodic statement showing the alleged error. If a State law allows the consumer 90 days to submit a notice, the State law remains in effect to provide the extra 30 days. Any State law disclosures concerning this extended state time limit must reflect the qualifications and conform to the format specified in § 226.28(a)(2)(i). Examples of laws that would be preempted include:

- A State law that has a narrower or broader definition of "billing error."
- A State law that requires the creditor to take different steps to resolve errors.
- A State law that provides different timing rules for error resolution (subject to the exception discussed above).

6. *Rules for other fair credit billing provisions.* The second part of the criteria for fair credit billing relates to the other rules implementing chapter 4 of the Act (addressed in §§ 226.4(c)(8), 226.5(b)(2)(ii), 226.6(d), 226.7(k), 226.9(a), 226.10, 226.11, 226.12 (c) through (f), 226.13, and 226.21). Section 226.28(a)(2)(ii) provides that the test of inconsistency is whether the creditor can comply with State law without violating Federal law. For example:

- A State law that allows the card issuer to offset the consumer's credit-card indebtedness against funds held by the card issuer would be preempted, since § 226.12(d) prohibits such action.
- A State law that requires periodic statements to be sent *more* than 14 days before the end of a free-ride period would not be preempted.
- A State law that permits consumers to assert claims and defenses against the card issuer without regard to the $50 and 100-mile limitations of § 226.12(c)(3)(ii) would not be preempted.

In the last 2 cases, compliance with State law would involve no violation of the Federal law.

7. *Who may receive a chapter 4 determination.* Only states (through their authorized

officials) may request and receive determinations on inconsistency with respect to the fair credit billing provisions.

8. *Preemption determination—Arizona.* Effective October 1, 1983, the Board has determined that the following provisions in the State law of Arizona are preempted by the Federal law:

- Section 44-287 B.5—Disclosure of final cash price balance. This provision is preempted in those transactions in which the amount of the final cash price balance is the same as the Federal amount financed, since in such transactions the State law requires the use of a term different from the Federal term to represent the same amount.
- Section 44-287 B.6—Disclosure of finance charge. This provision is preempted in those transactions in which the amount of the finance charge is different from the amount of the Federal finance charge, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount.
- Section 44-287 B.7—Disclosure of the time balance. The time balance disclosure provision is preempted in those transactions in which the amount is the same as the amount of the Federal total of payments, since in such transactions the State law requires the use of a term different from the Federal term to represent the same amount.

9. *Preemption determination—Florida.* Effective October 1, 1983, the Board has determined that the following provisions in the State law of Florida are preempted by the Federal law:

- Sections 520.07(2)(f) and 520.34(2)(f)—Disclosure of amount financed. This disclosure is preempted in those transactions in which the amount is different from the Federal amount financed, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount.
- Sections 520.07(2)(g), 520.34(2)(g), and 520.35(2)(d)—Disclosure of finance charge and a description of its components. The finance charge disclosure is preempted in those transactions in which the amount of the finance charge is different from the Federal amount, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount. The requirement to describe or itemize the components of the finance charge, which is also included in these provisions, is not preempted.
- Sections 520.07(2)(h) and 520.34(2)(h)—Disclosure of total of payments. The total of payments disclosure is preempted in those transactions in which the amount differs from the amount of the Federal total of payments, since in such transactions the State law requires the use of the same term as the Federal law to represent a different amount than the Federal law.
- Sections 520.07(2)(i) and 520.34(2)(i)—Disclosure of deferred payment price. This disclosure is preempted in those transactions in which the amount is the same as the Federal total sale price, since in such transactions the State law requires the use of a different term than the Federal law to represent the same amount as the Federal law.

10. *Preemption determination—Missouri.* Effective October 1, 1983, the Board has determined that the following provisions in the State law of Missouri are preempted by the Federal law:

- Sections 365.070-6(9) and 408.260-5(6)—Disclosure of principal balance. This disclosure is preempted in those transactions in which the amount of the principal balance is the same as the Federal amount financed, since in such transactions the State law requires the use of a term different from the Federal term to represent the same amount.
- Sections 365.070-6(10) and 408.260-5(7)—Disclosure of time price differential and time charge, respectively. These disclosures are preempted in those transactions in which the amount is the same as the Federal finance charge, since in such transactions the State law requires the use of a term different from the Federal law to represent the same amount.
- Sections 365.070-2 and 408.260-2—Use of the terms "time price differential" and "time charge" in certain notices to the buyer. In those transactions in which the State disclosure of the time price differential or time charge is preempted, the use of the terms in this notice also is preempted. The notice itself is not preempted.
- Sections 365.070-6(11) and 408.260-5(8)—Disclosure of time balance. The time balance disclosure is preempted in those transactions in which the amount is the same as the amount of the Federal total of payments, since in such transactions the State law requires the use of a different term than the Federal law to represent the same amount.
- Sections 365.070-6(12) and 408.260-5(9)—Disclosure of time sale price. This disclosure is preempted in those transactions in which the amount is the same as the Federal total sale price, since in such transactions the State law requires the use of a different term from the Federal law to represent the same amount.

11. *Preemption determination—Mississippi.* Effective October 1, 1984, the Board has determined that the following provision in

the State law of Mississippi is preempted by the Federal law:

- Section 63-19-31(2)(g)—Disclosure of finance charge. This disclosure is preempted in those cases in which the term "finance charge" would be used under State law to describe a different amount than the finance charge disclosed under Federal law.

12. *Preemption determination—South Carolina.* Effective October 1, 1984, the Board has determined that the following provision in the State law of South Carolina is preempted by the Federal law.

- Section 37-10-102(c)—Disclosure of due-on-sale clause. This provision is preempted, but only to the extent that the creditor is required to include the disclosure with the segregated federal disclosures. If the creditor may comply with the State law by placing the due-on-sale notice apart from the Federal disclosures, the state law is not preempted.

28(b) Equivalent disclosure requirements.

1. *General.* A state disclosure may be substituted for a Federal disclosure only *after* the Board has made a finding of substantial similarity. Thus, the creditor may not unilaterally choose to make a state disclosure in place of a Federal disclosure, even if it believes that the state disclosure is substantially similar. Since the rule stated in § 226.28(b) does not extend to any requirement relating to the finance charge or annual percentage rate, no state provision on computation, description, or disclosure of these terms may be substituted for the Federal provision.

References

Statute: Sections 111 and 171 (a) and (c).

Other sections: Appendix A.

Previous regulation: Section 226.6 (b) and (c), and Interpretation § 226.604.

1981 changes: Section 226.28 implements amended section 111 of the act. The test for preemption of state laws relating to disclosure and advertising is now whether the state law "contradicts" the Federal, rather than whether state requirements are "different."

The revised regulation contains no counterpart to § 226.6(c) of the previous regulation concerning placement of inconsistent disclosures. It also reflects the statutory amendment providing that once the Board determines that a state-required disclosure is inconsistent with Federal law, the creditor may not make the state disclosure.

Section 226.29—State Exemptions

29(a) General rule.

1. *Classes eligible.* The state determines the classes of transactions for which it will request an exemption, and makes its application for those classes. Classes might be, for example, all open-end credit transactions, all open-end and closed-end transactions, or all transactions in which the creditor is a bank.

2. *Substantial similarity.* The "substantially similar" standard requires that state statutory or regulatory provisions and state interpretations of those provisions be generally the same as the Federal Act and Regulation Z. This includes the requirement that state provisions for reimbursement to consumers for overcharges be at least equivalent to those required in section 108 of the act. A State will be eligible for an exemption even if its law covers classes of transactions not covered by the Federal law. For example, if a state's law covers agricultural credit, this will not prevent the Board from granting an exemption for consumer credit, even though agricultural credit is not covered by the Federal law.

3. *Adequate enforcement.* The standard requiring adequate provision for enforcement generally means that appropriate state officials must be authorized to enforce the state law through procedures and sanctions comparable to those available to Federal enforcement agencies. Furthermore, state law must make adequate provision for enforcement of the reimbursement rules.

4. *Exemptions granted.* Effective October 1, 1982, the Board has granted the following exemptions from portions of the revised Truth in Lending Act:

- *Maine.* Credit or lease transactions subject to the Maine Consumer Credit Code and its implementing regulations are exempt from chapters 2, 4 and 5 of the Federal Act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor or lessor.)
- *Connecticut.* Credit transactions subject to the Connecticut Truth in Lending Act are exempt from chapters 2 and 4 of the Federal Act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.)
- *Massachusetts.* Credit transactions subject to the Massachusetts Truth in Lending Act are exempt from chapters 2 and 4 of the Federal Act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.)
- *Oklahoma.* Credit or lease transactions subject to the Oklahoma Consumer Credit Code are exempt from chapters 2 and 5 of the Federal Act. (The exemption does not apply to sections 132 through 135 of the Federal Act, nor does it apply to transactions in which a federally chartered institution is a creditor or lessor.)
- *Wyoming.* Credit transactions subject to the Wyoming Consumer Credit Code are exempt from chapter 2 of the Federal Act. (The exemption does not apply to transactions in which a federally chartered institution is a creditor.)

29(b) Civil liability.

1. *Not eligible for exemption.* The provision that an exemption may not extend to sections 130 and 131 of the Act assures that consumers retain access to both Federal and State courts in seeking damages or civil penalties for violations, while creditors retain the defenses specified in those sections.

References

Statute: Sections 108, 123, and 171(b).

Other sections: Appendix B.

Previous regulation: Section 226.12.

1981 changes: The procedures that states must follow to seek exemptions are now located in an appendix. Exemptions under the previous regulation will be automatically revoked on April 1, 1982, when compliance with the new regulation is mandatory.

APPENDIX A—EFFECT ON STATE LAWS

1. *Who may make requests.* Appendix A sets forth the procedures for preemption determinations. As discussed in § 226.28, which contains the standards for preemption, a request for a determination of whether a state law is inconsistent with the requirements of chapters 1, 2, or 3 may be made by creditors, states, or any interested party. However, only states may request and receive determinations in connection with the fair credit billing provisions of chapter 4.

References

Statute: Sections 111 and 171(a).

Other sections: Section 226.28.

Previous regulation: Sections 226.6(b) and 226.70 (Supplement V, Section II).

1981 changes: The procedures in Appendix A were largely adapted from Supplement V, Section II of the previous regulation (§ 226.70), with changes made to streamline the procedures.

APPENDIX B—STATE EXEMPTIONS

1. *General.* Appendix B sets forth the procedures for exemption applications. The exemption standards are found in § 226.29 and are discussed in the commentary to that section.

References

Statute: Sections 123 and 171(b).

Other sections: Section 226.29.

Previous regulation: Sections 226.12, 226.50 (Supplement II), 226.60 (Supplement IV), and 226.70 (Supplement V, Section I).

1981 changes: The procedures in Appendix B represent a combination and streamlining of the procedures set forth in the supplements to the previous regulation.

APPENDIX C—ISSUANCE OF STAFF INTERPRETATIONS

1. *General.* This commentary is the vehicle for providing official staff interpretations. Individual interpretations generally will not be issued separately from the commentary.

References

Statute: Sections 105 and 130(f).

Other sections: None.

Previous regulation: Section 226.1(d).

1981 changes: Appendix C reflects the Board's intention that this commentary serve as the vehicle for interpreting the regulation, rather than individual interpretive letters.

APPENDIX D—MULTIPLE-ADVANCE CONSTRUCTION LOANS

1. *General rule.* Appendix D provides a special procedure that creditors may use, at their option, to estimate and disclose the terms of multiple-advance construction loans when the amounts or timing of advances is unknown at consummation of the transaction. This appendix reflects the approach taken in § 226.17(c)(6)(ii), which permits creditors to provide separate or combined disclosures for the construction period and for the permanent financing, if any; i.e., the construction phase and the permanent phase may be treated as one transaction or more than one transaction. Appendix D may also be used in multiple-advance transactions other than construction loans, when the amounts or timing of advances is unknown at consummation.

2. *Variable-rate multiple-advance loans.* The hypothetical disclosure required in most variable-rate transactions by § 226.18(f)(4) is not required for multiple-advance loans disclosed pursuant to Appendix D, Part I.

3. *Calculation of the total of payments.* When disclosures are made pursuant to Appendix D, the total of payments may reflect either the sum of the payments or the sum of the amount financed and the finance charge.

4. *Annual percentage rate.* Appendix D does not require the use of Volume I of the Board's Annual Percentage Rate Tables for calculation of the annual percentage rate. Creditors utilizing Appendix D in making calculations and disclosures may use other computation tools to determine the estimated annual percentage rate, based on the finance charge and payment schedule obtained by use of the Appendix.

References

Statute: None.

Other sections: Sections 226.17 and 226.22.

Previous regulation: Interpretation § 226.813.

1981 Changes: The use of Appendix D is limited to multiple-advance loans for construction purposes or analogous types of transactions.

APPENDIX E—RULES FOR CARD ISSUERS THAT BILL ON A TRANSACTION-BY-TRANSACTION BASIS

Statute: None.

Previous regulation: Interpretation § 226.709.

Other sections: Sections 226.6 through 226.13, and 226.15.

1981 changes: The rules in this appendix have been streamlined and clarified to indicate how certain card issuers that bill on a transaction basis may comply with the requirements of Subpart B.

APPENDIX F—ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CERTAIN OPEN-END CREDIT PLANS

1. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)-6 for guidance on an appropriate calculation method.

References

Statute: Section 107.

Previous regulation: Section 226.5(a)(3)(ii), footnote 5(a).

Other sections: Section 226.14.

1981 changes: This appendix incorporates a sixth example in which the transaction amount exceeds the amount of the balance subject to the periodic rate.

APPENDICES G AND H—OPEN-END AND CLOSED-END MODEL FORMS AND CLAUSES

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability. The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Acceptable changes include, for example:

- Using the first person, instead of the second person, in referring to the borrower.
- Using "borrower" and "creditor" instead of pronouns.
- Rearranging the sequence of the disclosures.
- Not using bold type for headings.
- Incorporating certain state "plain English" requirements.
- Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0", crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multi-purpose standard forms.)
- Substituting appropriate references, such as "bank," "we," or a specific name, for "creditor" in the initial open-end disclosures.
- Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

APPENDIX G—OPEN-END MODEL FORMS AND CLAUSES

1. *Model G-1.* The model disclosures in G-1 (different balance computation methods) may be used in both the initial disclosures under § 226.6 and the periodic disclosures under § 226.7. As is clear from the models given, "short-hand" descriptions of the balance computation methods are not sufficient. The phrase "a portion of" the finance charge should be included if the total finance charge includes other amounts, such as transaction charges, that are not due to the application of a periodic rate. In addition, if unpaid finance charges are subtracted in calculating the balance, that fact must be stated so that the disclosure of the computation method is accurate. Only Model G-1(b) contains a final sentence appearing in brackets which reflects the total dollar amount of payments and credits received during the billing cycle. The other models do not contain this language because they reflect plans in which payments and credits received during the billing cycle are subtracted. If this is not the case, however, the language relating to payments and credits should be changed, and the creditor should add either the disclosure of the dollar amount as in Model G-1(b) or an indication of which credits (disclosed elsewhere on the periodic statement) will not be deducted in determining the balance. (Such an indication may also substitute for the bracketed sentence in Model G-1(b)). See the commentary to § 226.7(e).

2. *Model G-2.* This model contains the notice of liability for unauthorized use of a credit card.

3. *Models G-3 and G-4.* These set out models for the long form billing error rights statement (for use with the initial disclosures and as an annual disclosure or, at the creditor's option, with each periodic statement) and the alternative billing error rights statement (for use with each periodic statement), respectively. Creditors must provide the billing error rights statements

in a form substantially similar to the models in order to comply with the regulation. The model billing rights statements may be modified in any of the ways set forth in the first paragraph to the commentary on Appendices G and H. The models may, furthermore, be modified by deleting inapplicable information, such as:

- The paragraph concerning stopping a debit in relation to a disputed amount, if the creditor does not have the ability to debit automatically the consumer's saving or checking account for payment.
- The rights stated in the special rule for credit card purchases and any limitations on those rights.

The model billing rights statements also contain optional language that creditors may use. For example, the creditor may:

- Include a statement to the effect that notice of a billing error must be submitted on something other than the payment ticket or other material accompanying the periodic disclosures.
- Insert its address or refer to the address that appears elsewhere on the bill.

Additional information may be included on the statements as long as it does not detract from the required disclosures. For instance, information concerning the reporting of errors in connection with a checking account may be included on a combined statement as long as the disclosures required by the regulation remain clear and conspicuous.

4. *Models G-5 through G-9.* These models set out notices of the right to rescind that would be used at different times in an open-end plan. The last paragraph of each of the rescission model forms contains a blank for the date by which the consumer's notice of cancellation must be sent or delivered. A parenthetical is included to address the situation in which the consumer's right to rescind the transaction exists beyond 3 business days following the date of the transaction, for example, when the notice or material disclosures are delivered late or when the date of the transaction in paragraph 1 of the notice is an estimate. The language of the parenthetical is not optional.

APPENDIX H—CLOSED-END MODEL FORMS AND CLAUSES

1. *Models H-1 and H-2.* Creditors may make several types of changes to closed-end model forms H-1 (credit sale) and H-2 (loan) and still be deemed to be in compliance with the regulation, provided that the required disclosures are made clearly and conspicuously. Permissible changes include the addition of the information permitted by footnote 37 to § 226.17 and "directly related" information as set forth in the commentary to § 226.17(a).

The creditor may also delete or, on multipurpose forms, indicate inapplicable disclosures, such as:

- The itemization of the amount financed option. (See Samples H-12 through H-15.)
- The credit life and disability insurance disclosures. (See Samples H-11 and H-12.)
- The property insurance disclosures. (See Samples H-10 through H-12, and H-14.)
- The "filing fees" and "non-filing insurance" disclosures. (See Samples H-11 and H-12.)
- The prepayment penalty or rebate disclosures. (See Samples H-12 and H-14.)
- The total sale price. (See Samples H-11 through H-15.)

Other permissible changes include:

- Adding the creditor's address or telephone number. (See the commentary to § 226.18(a).)
- Combining required terms where several numerical disclosures are the same, for instance, if the "total of payments" equals the "total sale price." (See the commentary to § 226.18.)
- Rearranging the sequence or location of the disclosures—for instance, by placing the descriptive phrases outside the boxes containing the corresponding disclosures, or by grouping the descriptors together as a glossary of terms in a separate section of the segregated disclosures; by placing the payment schedule at the top of the form; or by changing the order of the disclosures in the boxes, including the annual percentage rate and finance charge boxes.
- Using brackets, instead of checkboxes, to indicate inapplicable disclosures.
- Using a line for the consumer to initial, rather than a checkbox, to indicate an election to receive an itemization of the amount financed.
- Deleting captions for disclosures.
- Using a symbol, such as an asterisk, for estimated disclosures, instead of an "e."
- Adding a signature line to the insurance disclosures to reflect joint policies.
- Separately itemizing the filing fees.
- Revising the late charge disclosure in accordance with the commentary to § 226.18(l).

2. *Model H-3.* Creditors have considerable flexibility in filling out Model H-3 (itemization of the amount financed). Appropriate revisions, such as those set out in the commentary to § 226.18(c), may be made to this form without loss of protection from civil liability for proper use of the model forms.

3. *Models H-4 through H-7.* The model clauses are not included in the model forms although they are mandatory for certain transactions. Creditors using the model clauses when applicable to a transaction are deemed to be in compliance with the regulation with regard to that disclosure.

4. *Model H-4.* This model contains the variable rate model clauses and is intended to give creditors considerable flexibility in structuring variable rate disclosures to fit individual plans. The information about circumstances, limitations, and effects of an increase may be given in terms of the contract interest rate or the annual percentage rate. Clauses are shown for hypothetical examples based on the specific amount of the transaction and based on a representative amount. Creditors may preprint the variable rate disclosures based on a representative amount for similar types of transactions, instead of constructing an individualized example for each transaction. In both representative examples and transaction-specific examples, creditors may refer either to the incremental change in rate, payment amount, or number of payments, or to the resulting rate, payment amount, or number of payments. For example, creditors may state that the rate will increase by 2%, with a corresponding $150 increase in the payment, or creditors may state that the rate will increase to 16%, with a corresponding payment of $850.

5. *Model H-5.* This contains the demand feature clause.

6. *Model H-6.* This contains the assumption clause.

7. *Model H-7.* This contains the required deposit clause.

8. *Models H-8 and H-9.* These models contain the rescission notices for a typical closed-end transaction and a refinancing, respectively. The last paragraph of each model form contains a blank for the date by which the consumer's notice of cancellation must be sent or delivered. A parenthetical is included to address the situation in which the consumer's right to rescind the transaction exists beyond 3 business days following the date of the transaction, for example, where the notice or material disclosures are delivered late or where the date of the transaction in paragraph 1 of the notice is an estimate. The language of the parenthetical is not optional.

9. *Sample forms.* The sample forms (H-10 through H-15) serve a different purpose than the model forms. The samples illustrate various ways of adapting the model forms to the individual transactions described in the commentary to Appendix H. The deletions and rearrangments shown relate only to the specific transactions described. As a result, the samples do not provide the general protection from civil liability provided by the model forms and clauses.

10. *Sample H-10.* This sample illustrates an automobile credit sale. The cash price is $7,500 with a downpayment of $1,500. There is an 8% add-on interest rate and a term of 3 years, with 36 equal monthly payments. The credit life insurance premium and the filing fees are financed by the creditor. There is a $25 credit report fee paid by the consumer before consummation, which is a prepaid finance charge.

11. *Sample H-11.* This sample illustrates an installment loan. The amount of the loan is $5,000. There is a 12% simple interest rate and a term of 2 years. The date of the transaction is expected to be April 15, 1981, with the first payment due on June 1, 1981. The first payment amount is labelled as an estimate since the transaction date is uncertain. The odd days' interest ($26.67) is collected with the first payment. The remaining 23 monthly payments are equal.

12. *Sample H-12.* This sample illustrates a refinancing and consolidation loan. The amount of the loan is $5,000. There is a 15% simple interest rate and a term of 3 years. The date of the transaction is April 1, 1981, with the first payment due on May 1, 1981. The first 35 monthly payments are equal, with an odd final payment. The credit disability insurance premium is financed. In calculating the annual percentage rate, the U.S. Rule has been used. Since an itemization of the amount financed is included with the disclosures, the statement regarding the consumer's option to receive an itemization is deleted.

13. *Samples H-13 through H-15.* These samples illustrate various mortgage transactions. They assume that the mortgages are subject to the Real Estate Settlement Procedures Act (RESPA). As a result, no option regarding the itemization of the amount financed has been included in the samples, because providing the good faith estimates of settlement costs required by RESPA satisfies Truth in Lending's amount financed itemization requirement. (See footnote 39 to § 226.18(c).)

14. *Sample H-13.* This sample illustrates a mortgage with a demand feature. The loan amount is $44,900, payable in 360 monthly installments at a simple interest rate of 14.75%. The 15 days of interim interest ($294.34) is collected as a prepaid finance charge at the time of consummation of the loan (April 15, 1981). In calculating the disclosure amounts, the minor irregularities provision in § 226.17(c)(4) has been used. The property insurance premiums are not included in the payment schedule. This disclosure statement could be used for notes with the 7-year call option required by the Federal National Mortgage Association (FNMA) in states where due-on-sale clauses are prohibited.

15. *Sample H-14.* This sample illustrates a variable rate mortgage. The loan amount is $44,900, payable in 360 monthly installments at an initial interest rate of 14.75%. All payment periods are regular. Two points ($898) have been imposed and included in the prepaid finance charge. The note pro-

vides that the interest rate may vary with the lender's prime rate, with a maximum permissible increase of 5% over the term of the mortgage. The interest rate may not vary more frequently than once a year, and may not increase by more than 1% annually. Rate fluctuations will be reflected in the monthly payment amount.

16. *Sample H-15.* This sample illustrates a graduated payment mortgage with a 5-year graduation period and a 7½ percent yearly increase in payments. The loan amount is $44,900, payable in 360 monthly installments at a simple interest rate of 14.75%. Two points ($898), as well as an initial mortgage guarantee insurance premium of $225.00, are included in the prepaid finance charge. The mortgage guarantee insurance premiums are calculated on the basis of ¼ of 1% of the outstanding principal balance under an annual reduction plan. The abbreviated disclosure permitted under § 226.18(g)(2) is used for the payment schedule for years 6 through 30. The prepayment disclosure refers to both penalties and rebates because information about penalties is required for the simple interest portion of the obligation and information about rebates is required for the mortgage insurance portion of the obligation.

17. *HRSA-500-1 9-82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-500-1 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all Health Education Assistance Loans (HEAL) with a variable interest rate that are interim student credit extensions as defined in Regulation Z.

18. *HRSA-500-2 9-82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-500-2 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a fixed interest rate that are interim student credit extensions as defined in Regulation Z.

19. *HRSA-502-1 9-82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-502-1 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a variable interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

20. *HRSA-502-2 9-82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA-502-2 9-82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved. The form may be used for all HEAL loans with a fixed interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

References

Statute: Sections 105 and 130.

Other sections: Sections 226.6, 226.7, 226.9, 226.12, 226.15, 226.18, and 226.23.

Previous regulation: None.

1981 changes: The model forms and clauses have no counterpart in the previous regulation.

APPENDIX I—FEDERAL ENFORCEMENT AGENCIES

Statute: Section 108.

Other sections: None.

Previous regulation: Section 226.1(b).

1981 changes: None.

APPENDIX J—ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CLOSED-END CREDIT TRANSACTIONS

1. *Use of Appendix J.* Appendix J sets forth the actuarial equations and instructions for calculating the annual percentage rate in closed-end credit transactions. While the formulas contained in this appendix may be directly applied to calculate the annual percentage rate for an individual transaction, they may also be utilized to program calculators and computers to perform the calculations.

2. *Relation to Board tables.* The Board's Annual Percentage Rate Tables also provide creditors with a calculation tool that applies the technical information in Appendix J. An annual percentage rate computed in accordance with the instructions in the tables is deemed to comply with the regulation. Volume I of the tables may be used for credit transactions involving equal payment amounts and periods, as well as for transactions involving any of the following irregularities: odd first period, odd first payment and odd last payment. Volume II of the tables may be used for transactions that involve any type of irregularities. These tables may be obtained from any Federal Reserve Bank or from the Board in Washington, D.C. 20551, upon request.

References

Statute: Section 107.

Other sections: Section 226.22.

Previous regulation: Section 226.40 (Supplement I).

1981 changes: Paragraph (b)(2) has been revised to clarify that the term of the transaction never begins earlier than consummation of the transaction. Paragraph (b)(5)(vi) has been revised to permit creditors in all cases where the transaction term equals a whole number of months, to use either the 12-month method or the 365-day method to compute the number of unit-periods per year.

[46 FR 50288, Oct. 9, 1981, as amended at 46 FR 58644, Dec. 3, 1981; 46 FR 60190, Dec. 9, 1981; 46 FR 61067, Dec. 15, 1981; 47 FR 41338, Sept. 20, 1982; 47 FR 51732, Nov. 17, 1982; 48 FR 14886, Apr. 6, 1983; 49 FR 13484, Apr. 5, 1984; 49 FR 17932, Apr. 26, 1984; 49 FR 18816, May 3, 1984; 49 FR 40560, Oct. 17, 1984; 50 FR 13183, Apr. 3, 1985]

PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES

Sec.

Subpart A—Consumer Complaints

227.1 Definitions.
227.2 Consumer complaint procedure.

Subpart B—Credit Practices Rule

227.11 Authority, purpose, and scope.
227.12 Definitions.
227.13 Unfair credit contract provisions.
227.14 Unfair or deceptive practices involving cosigners.
227.15 Unfair late charges.
227.16 State exemptions.

Subpart A—Consumer Complaints

AUTHORITY: Sec. 18(f), Federal Trade Commission Act, as amended by Pub. L. 93-637.

§ 227.1 Definitions.

For the purposes of this part,[1] unless the context indicates otherwise, the following definitions apply:

(a) "Board" means the Board of Governors of the Federal Reserve System.

(b) "Consumer complaint" means an allegation by or on behalf of an individual, group of individuals, or other entity that a particular act or practice of a State member bank is unfair or deceptive, or in violation of a regulation issued by the Board pursuant to a Federal statute, or in violation of any other Act or regulation under which the bank must operate.

(c) "State member bank" means a bank that is chartered by a State and is a member of the Federal Reserve System.

(d) Unless the context indicates otherwise, "bank" shall be construed to mean a "State member bank," and "complaint" to mean a "consumer complaint."

[41 FR 44362, Oct. 8, 1976]

§ 227.2 Consumer complaint procedure.

(a) *Submission of complaints.* (1) Any consumer having a complaint regarding a State member bank is invited to submit it to the Federal Reserve System. The complaint should be submitted in writing, if possible, and should include the following information:

(i) A description of the act or practice that is thought to be unfair or deceptive, or in violation of existing law or regulation, including all relevant facts;

(ii) The name and address of the bank that is the subject of the complaint; and

(iii) The name and address of the complainant.

(2) Consumer complaints should be made to:

(i) The Director, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551; or

(ii) The Federal Reserve Bank of the District in which the bank is located. The addresses of the Federal Reserve Banks are as follows:

Federal Reserve Bank of Boston, 30 Pearl Street, Boston, Massachusetts 02106.

Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045.

Federal Reserve Bank of Philadelphia, 100 North 6th Street, Philadelphia, Pennsylvania 19105.

Federal Reserve Bank of Cleveland, 1455 East Sixth Street, Cleveland, Ohio 44101.

Federal Reserve Bank of Richmond, 100 North Ninth Street, Richmond, Virginia 23261.

Federal Reserve Bank of Chicago, 230 South La Salle Street, Chicago, Illinois 60660.

Federal Reserve Bank of St. Louis, 411 Locust Street, St. Louis, Missouri 63166.

Federal Reserve Bank of Minneapolis, 250 Marquette Street, Minneapolis, Minnesota 55480.

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[1] The words "this part," as used herein, mean Title 12, Chapter II, Part 227 of the Code of Federal Regulations, cited as 12 CFR Part 227 and designated as Regulation AA.

Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, Missouri 64198.

Federal Reserve Bank of Dallas, 400 South Akard Street, Dallas, Texas 75222.

Federal Reserve Bank of Atlanta, 104 Marietta Street NW., Atlanta, Georgia 30303.

Federal Reserve Bank of San Francisco, 400 Sansome Street, San Francisco, California 94120.

(b) *Response to complaints.* Within 15 business days of receipt of a written complaint by the Board or a Federal Reserve Bank, a substantive response or an acknowledgment setting a reasonable time for a substantive response will be sent to the individual making the complaint.

(c) *Referrals to other agencies.* Complaints received by the Board or a Federal Reserve Bank regarding an act or practice of an institution other than a State member bank will be forwarded to the Federal agency having jurisdiction over that institution.

[41 FR 44362, Oct. 8, 1976, as amended at 42 FR 2950, Jan. 14, 1977]

Subpart B—Credit Practices Rule

AUTHORITY: 15 U.S.C. 57a.

SOURCE: 50 FR 16697, Apr. 29, 1985, unless otherwise noted.

§ 227.11 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board under section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a(f) (section 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93-637).

(b) *Purpose.* Unfair or deceptive acts or practices in or affecting commerce are unlawful under section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). This subpart defines unfair or deceptive acts or practices of banks in connection with extensions of credit to consumers.

(c) *Scope.* This subpart applies to all banks and their subsidiaries, except savings banks that are members of the Federal Home Loan Bank System. Compliance is to be enforced by:

(1) The Comptroller of the Currency, in the case of national banks and banks operating under the code of laws for the District of Columbia;

(2) The Board of Governors of the Federal Reserve System, in the case of banks that are members of the Federal Reserve System (other than banks referred to in paragraph (c)(1) of this section); and

(3) The Federal Deposit Insurance Corporation, in the case of banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in paragraphs (c)(1) and (c)(2) of this section).

§ 227.12 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) "Consumer" means a natural person who seeks or acquires goods, services, or money for personal, family, or household use other than for the purchase of real property.

(b)(1) "Cosigner" means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account.

(2) "Cosigner" includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law.

(3) A person who meets the definition in this paragraph is a "cosigner," whether or not the person is designated as such on the credit obligation.

(c) "Earnings" means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(d) "Household goods" means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and the consumer's dependents. The term "household goods" does not include:

(1) Works of art;

(2) Electronic entertainment equipment (other than one television and one radio);

(3) Items acquired as antiques; that is, items over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character; and

(4) Jewelry (other than wedding rings).

(e) "Obligation" means an agreement between a consumer and a creditor.

(f) "Person" means an individual, corporation, or other business organization.

§ 227.13 Unfair credit contract provisions.

It is an unfair act or practice for a bank to enter into a consumer credit obligation that contains, or to enforce in a consumer credit obligation purchased by the bank, any of the following provisions:

(a) *Confession of judgment.* A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right of notice and the opportunity to be heard in the event of suit or process thereon.

(b) *Waiver of exemption.* An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(c) *Assignment of wages.* An assignment of wages or other earnings unless:

(1) The assignment by its terms is revocable at the will of the debtor;

(2) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or

(3) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(d) *Security interest in household goods.* A nonpossessory security interest in household goods other than a purchase money security interest.

§ 227.14 Unfair or deceptive practices involving cosigners.

(a) *Pronhibited practices.* In connection with the extension of credit to consumers, it is:

(1) A deceptive act or practice for a bank to misrepresent the nature or extent of cosigner liability to any person; and

(2) An unfair act or practice for a bank to obligate a cosigner unless the cosigner is informed prior to becoming obligated of the nature of the cosigner's liability.

(b) *Disclosure requirement.* (1) A clear and conspicuous disclosure statement shall be given in writing to the cosigner prior to becoming obligated. The disclosure statement shall be substantially similar to the following statement and shall either be a separate document or included in the documents evidencing the consumer credit obligation.

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The bank can collect this debt from you without first trying to collect from the borrower. The bank can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of *your* credit record.

This notice is not the contract that makes you liable for the debt.

(2) In the case of open-end credit, the disclosure statement shall be given to the cosigner prior to the time that the cosigner becomes obligated for fees or transactions on the account.

(3) A bank that is in compliance with this paragraph may not be held in violation of paragraph (a)(2) of this section.

§ 227.15 Unfair late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a bank to levy or collect any delinquency charge on a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period.

(b) For the purposes of this section, "collecting a debt" means any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of money due (or alleged to be due) from a consumer.

§ 227.16 State exemptions.

(a) *General rule.* (1) An appropriate state agency may apply to the Board for a determination that:

(i) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this subpart applies; and

(ii) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this subpart.

(2) If the Board makes such a determination, the provision of this subpart will not be in effect in that state to the extent specified by the Board in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively.

(b) *Applications.* The procedures under which a state agency may apply for an exemption under this section are the same as those set forth in Appendix B to Regulation Z (12 CFR Part 226).

PART 228—COMMUNITY REINVESTMENT

Sec.
228.1 Authority.
228.2 Purposes.
228.3 Delineation of community.
228.4 Community Reinvestment Act Statement.
228.5 Files of public comments and recent CRA Statements.
228.6 Public notice.
228.7 Assessing the record of performance.
228.8 Effect on Applications.
228.100 Applicability of the Community Reinvestment Act to certain special purpose banks.

AUTHORITY: Community Reinvestment Act of 1977 (title VIII, Pub. L. 95-128, 91 Stat. 1147 (12 U.S.C. 2901 et seq.)); 12 U.S.C. 321, 325, 1814, 1816, 1828, 1842, unless otherwise noted.

SOURCE: 43 FR 47148, Oct. 12, 1978, unless otherwise noted.

§ 228.1 Authority.

The Board of Governors of the Federal Reserve System issues this part to implement the Community Reinvestment Act (12 U.S.C. 2901 et seq.). The regulations comprising this part are issued under the authority of the Community Reinvestment Act and under the provisions of the United States Code authorizing the Board to conduct examinations of State-chartered banks that are members of the Federal Reserve System (12 U.S.C. 325), to conduct examinations of bank holding companies and their subsidiaries (12 U.S.C. 1844), and to consider applications for domestic branches by State member banks (12 U.S.C. 321), for Federal deposit insurance in connection with applications for membership in the Federal Reserve System by State banks (12 U.S.C. 321, 1814, 1816), for merger in which the resulting bank would be a State member bank (12 U.S.C. 1828), and for formation of, acquisitions of banks by, and mergers of, bank holding companies (12 U.S.C. 1842).

§ 228.2 Purposes.

The purposes of this regulation are to encourage State member banks to help meet the credit needs of their local community or communities; to provide guidance to State member banks as to how the Board will assess the records of State member banks in satisfying their continuing and affirmative obligations to help meet the credit needs of their local communities, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of those banks; and to provide for taking into account those records in connection with certain applications.

§ 228.3 Delineation of community.

(a) Each State member bank shall prepare, and at least annually review, a delineation of the local community or communities that comprise its entire community, without excluding low- and moderate-income neighborhoods. Maps shall be used to portray community delineations. The reasonableness of the delineations will be reviewed by Federal Reserve System examiners.

(b) Except as provided in paragraph (c) of this section, a local community consists of the contiguous areas surrounding each office or group of offices, including any low- and moderate-income neighborhoods in those areas. More than one office of a State member bank may be included in the same local community. Unless the Board determines otherwise, a community delineation need not take account of an off-premises electronic facility that receives deposits for more than one depository institution. In preparing its delineation, a bank may use any one of the three bases set forth below.

(1) Existing boundaries such as those of standard metropolitan statistical areas (SMSA's) or counties in which the bank's office or offices are located may be used to delineate a local community. Where appropriate, portions of adjacent areas should be included. The bank may make adjustments in the case of areas divided by State borders or significant geographic barriers, or areas that are extremely large or of unusual configuration. In addition, a small bank may delineate those portions of SMSA's or counties it reasonably may be expected to serve.

(2) A bank may use its effective lending territory, which is defined as that local area or areas around each office or group of offices where it makes a substantial portion of its loans and all other areas equidistant from its offices as those areas. Adjustments such as those indicated in paragraph (b)(1) of this section may be made.

(3) A bank may use any other reasonably delineated local area that meets the purposes of the Community Reinvestment Act (CRA) and does not exclude low- and moderate-income neighborhoods.

(c) A State member bank whose business predominantly consists of serving persons who are active duty or retired military personnel or their dependents and who are located outside of its local community or communities, may delineate a "military community" for those customers, in addition to its local community or communities. Provisions of this part concerning local communities shall also apply to military communities, except that military communities shall be delineated by a written description rather than a map.

(Sec. 803, Pub. L. 95-128, as amended by sec. 1502, Pub. L. 95-630, 92 Stat. 3713 (12 U.S.C. 2902))

[43 FR 47148, Oct. 12, 1978, as amended at 44 FR 18165, Mar. 27, 1979]

§ 228.4 Community Reinvestment Act Statement.

(a) Within 90 days after the effective date of this part, the board of directors of each State member bank shall adopt a Community Reinvestment Act (CRA) Statement for each delineated local community.

(b) Each CRA Statement shall include at least the following:

(1) The delineation of the local community;

(2) A list of specific types of credit within certain categories, such as residential loans for 1- to 4-dwelling units, residential loans for 5 dwelling units and over, housing rehabilitation loans, home improvement loans, small business loans, farm loans, community development loans, commerical loans, and consumer loans, that the bank is prepared to extend within the local community; and

(3) A copy of the Community Reinvestment Act Notice provided for in § 228.6.

(c) Each State member bank is encouraged to include the following in each CRA Statement:

(1) A description of how its current efforts, including special credit-related programs, help to meet community credit needs;

(2) A periodic report regarding its record of helping to meet community credit needs; and

(3) A description of its efforts to ascertain the credit needs of its community, including efforts to communicate with members of its community regarding credit services.

(d) Each State member bank's board of directors shall review each CRA Statement at least annually and shall act upon any material change made in the interim at its first regular meeting after the change. Such actions shall be noted in its minutes.

(e) Each current CRA Statement shall be readily available for public inspection:

(1) At the head office of the bank; and

(2) At each office of the bank in the local community delineated in the Statement, except off-premises electronic deposit facilities.

(f) Copies of each current CRA Statement shall be provided to the public upon request. A State member bank may charge a fee not to exceed the cost of reproduction.

§ 228.5 Files of public comments and recent CRA Statements.

(a) Each State member bank shall maintain files that are readily available for public inspection consisting of:

(1) Any signed, written comments received from the public within the past 2 years that specifically relate to any CRA Statement or to the bank's performance in helping to meet the credit needs of its community or communities;

(2) Any responses to the comments that the bank wishes to make; and

(3) Any CRA Statements in effect during the past 2 years.

(b) These files shall not contain any comments or responses that reflect adversely upon the good name or reputation of any person other than the bank, or publication of which would violate specific provisions of law.

(c) These files shall be maintained by each State member bank as follows:

(1) All materials at the head office; and

(2) Materials relating to each local community, at a designated office in that community.

§ 228.6 Public notice.

Within 90 days after the effective date of this part, each State member bank shall provide, in the public lobby of each if its offices other than off-premises electronic deposit facilities, the public notice set forth below. Bracketed material shall be used only by banks having more than one local community. The last item in this notice shall be included only if the bank is a subsidiary of a holding company that is not prevented by statute from acquiring additional banks.

COMMUNITY REINVESTMENT ACT NOTICE

The Federal Community Reinvestment Act (CRA) requires the Federal Reserve Board to evaluate our performance in helping to meet the credit needs of this community, and to take this evaluation into account when the Board decides on certain applications submitted by us. Your involvement is encouraged.

You should know that:

You may obtain our current CRA Statement for this community in this office. [Current CRA Statements for other communities served by us are available at our head office, located at (address).]

You may send signed, written comments about our CRA Statement[s] or our performance in helping to meet community credit needs to (title and address of State member bank official) and to Community Reinvestment Officer, Federal Reserve Bank of ———— (address). Your letter, together with any response by us, may be made public.

You may look at a file of all signed, written comments received by us within the past 2 years, any responses we have made to the comments, and all CRA Statements in effect during the past 2 years at our office located at (address). [You also may look at the file about this community at (name and address of designated office).]

You may ask to look at any comments received by the Federal Reserve Bank of ————.

You also may request from the Federal Reserve Bank of ——— an announcement of applications covered by the CRA filed with the Federal Reserve System.

We are a subsidiary of (name of holding company), a bank holding company. Applications filed by bank holding companies that are covered by the CRA are included in the Federal Reserve announcement of applications referred to in the previous paragraph.

§ 228.7 Assessing the record of performance.

In connection with its examination of a State member bank, the Board shall assess the record of performance of the bank in helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the bank. The Board will review the bank's CRA Statement(s) and any signed, written comments retained by the State member bank or the Federal Reserve Bank. In addition, the Board will consider the following factors in assessing a bank's record of performance:

(a) Activities conducted by the State member bank to ascertain the credit needs of its community, including the extent of the bank's efforts to communicate with members of its community regarding the credit services being provided by the bank;

(b) The extent of the State member bank's marketing and special credit-related programs to make members of the community aware of the credit services offered by the bank;

(c) The extent of participation by the State member bank's board of directors in formulating the bank's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act;

(d) Any practices intended to discourage applications for types of credit set forth in the State member bank's CRA Statement(s);

(e) The geographic distribution of the State member bank's credit extensions, credit applications, and credit denials;

(f) Evidence of prohibited discriminatory or other illegal credit practices;

(g) The State member bank's record of opening and closing offices and providing services at offices;

(h) The State member bank's participation, including investments, in local community development and redevelopment projects or programs;

(i) The State member bank's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its community, or the purchase of such loans originated in its community;

(j) The State member bank's participation in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses or small farms;

(k) The State member bank's ability to meet various community credit needs based on its financial condition and size, and legal impediments, local economic conditions and other factors; and

(l) Other factors that, in the Board's judgment, reasonably bear upon the extent to which a State member bank is helping to meet the credit needs of its entire community.

§ 228.8 Effect on Applications.

(a) In considering any application

(1) For membership in the Federal Reserve System where membership would confer Federal deposit insurance on a bank,

(2) By a State member bank for the establishment of a domestic branch or other facility that would be authorized to receive deposits,

(3) By a State member bank for the relocation of a domestic branch,

(4) For merger, consolidation, acquisition of assets, or assumption of liabilities if the acquiring, assuming, or resulting bank is to a State member bank,

(5) To become a bank holding company, and

(6) By a bank holding company to acquire ownership or control of shares or assets of a bank, or to merge or consolidate with any other bank holding company,

the Board will take into account, among other factors it considers, the record of performance in meeting the credit needs of its entire community of each applicant bank, each subsidiary bank of an applicant bank holding company, and each proposed subsidiary bank of an applicant under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) that has an officer, director, employee, or significant stockholder associated with the applicant. Those records of performance may be the basis for denying the application.

(b) In the case of each application for membership that would confer Federal deposit insurance, each application by a State member bank, and each application by a bank holding company with a State bank subsidiary, the Board will consider any views expressed by the respective State bank supervisors as to whether the State-chartered banks involved have been helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of those banks.

(c) At the request of an applicant, the Board will include in its consideration of an application the record of performance of nonbanking subsidiaries of bank holding companies in helping to meet the credit needs of the communities served by affiliated applicant banks or by subsidiary and proposed subsidiary banks of applicants under section 3 of the Bank Holding Company Act (12 U.S.C. 1842).

(d) At the time an application for membership that would confer Federal deposit insurance is made, the proposed State member bank shall submit to the Board a proposed CRA Statement conforming to the requirements of § 228.4.

§ 228.100 Applicability of the Community Reinvestment Act to certain special purpose banks.

In response to its proposed Regulation BB to implement the Community Reinvestment Act ("CRA") (12 U.S.C. 2901-05), the Board received several inquiries from institutions that, although they are chartered as banks, do not perform commercial or retail banking services. These institutions serve solely as correspondent banks, or as trust companies, or as clearing agents, and they do not extend credit to the public for their own account. The Board concludes that the CRA is not intended to cover these institutions.

It is the purpose of the CRA to require the Board to encourage banks to meet the credit needs of their local communities. To this end, the Board must assess banks' records of performance and take those records into account in acting on certain applications affecting the banks. The Board believes that these provisions were intended to cover all banks that are in the business of extending credit to the public including both "wholesale" and "retail" banks. The lending activities of these banks affect the economic health of the communities in which they are chartered. However, the Board believes it would be pointless to encourage or to assess the credit-granting record of institutions that are not organized to grant credit to the public in the ordinary course of business, other than as an incident to their specialized operations.

Accordingly the term "State member bank" as used in the Board's Regulation BB (12 CFR Part 228) does not include banks that engage solely in correspondent banking business, trust company business, or acting as a clearing agent.

PART 245—LOAN GUARANTEES FOR DEFENSE PRODUCTION

Sec.
245.1 Authority, purpose, and scope.
245.2 Processing of loan guarantee applications.
245.3 Federal Reserve Bank fees and charges.
245.4 Maximum rate of interest, guarantee fees, commitment fees, and prepayment penalties.

AUTHORITY: Sec. 302(c), E.O. 10480 (3 CFR 1949-53 Comp., p. 962), implementing sec. 301, Defense Production Act of 1950 (50 App. U.S.C. 2091).

SOURCE: Regulation V, 44 FR 10383, Feb. 20, 1979, unless otherwise noted. Redesignated at 45 FR 44574, July 1, 1980.

§ 245.1 Authority, purpose, and scope.

(a) *Authority.* This part comprises the regulations of the Board of Governors of the Federal Reserve System (referred to in this part as the "Board") issued pursuant to Executive

Order No. 10480 (3 CFR 1949-53 Comp., p. 962; reprinted as amended following 50 App. U.S.C. 2153 (1970)) (referred to in this part as the "Order"), implementing the Defense Production Act of 1950 (50 App. U.S.C. 2061 *et seq.* (1970)) (referred to in this part as the "Act").

(b) *Purpose and scope.* The purpose of the Act, the Order and this part is to facilitate the financing of contract or other operations deemed necessary to national defense production. This part applies to private financing institutions, located in the United States or in any of its Territories or possessions, that make loans for defense production that are guaranteed by the Federal departments or agencies designated by the Act of Order* (Commonly referred to as "V-loans").

§ 245.2 Processing of loan guarantee applications.

(a) *Submission of applications.* Any private financing institution may submit to the Federal Reserve Bank of its District an application for a guarantee of a loan to a borrower determined to be eligible in accordance with the provisions of paragraph (b) of this section. The application form is available through the Federal Reserve Bank.

(b) *Determination of eligibility of borrower.* To be eligible for a V-loan, a borrower must be seeking financing for a contract, subcontract, or other operation deemed by the appropriate guaranteeing Federal department or agency to be necessary to expedite production and deliveries or services under a Government contract for the procurement of materials or the performance of services for the national defense. A determination that the borrower is eligible shall be made by the guaranteeing department or agency on the basis of information contained in the loan guarantee application and any further information that it needs. No loan shall be guaranteed until that determination is made.

(c) *Lender's rates and fees.* No application for a loan guarantee shall be considered where the loan agreement is inconsistent with the rate of interest, guarantee fees, commitment fees, and prepayment penalties prescribed by the Board in § 245.4 (the Supplement).

(d) *Consideration of applications.* Each application by a financing institution shall be subject to approval by the guaranteeing department or agency or, to the extent that the department or agency prescribes, by the Federal Reserve Bank to which the application is submitted.

(1) If a guaranteeing department or agency is to decide the application, the Federal Reserve Bank shall make a recommendation for action on the application before the department or agency acts. The Federal Reserve Bank shall transmit the application and its recommendation, together with all necessary supporting information, through the Board to that department or agency. If the department or agency approves the application and transmits its authorization through the Board on the Board's standard form, the Federal Reserve Bank, acting as fiscal agent of the United States on behalf of the department or agency, shall execute and deliver the guarantee (Board's standard "V-Loan Guarantee Agreement" form) to the applicant in accordance with the terms of the authorization.

(2) If a Federal Reserve Bank is to decide the application, it shall do so without submitting the application to the guaranteeing department or agency for prior approval; but the application shall be subject first to the department's or agency's determination of the borrower's eligibility. If the Federal Reserve Bank approves the application, it shall execute and deliver the guarantee (Board's standard "V-Loan Guarantee Agreement" form) to the applicant and promptly notify the department or agency.

(e) *Basis of Federal Reserve Bank decision.* In making a recommendation or deciding an application as described in paragraph (d) of this section, a Federal Reserve Bank shall consider whether the financing arrangement affords the guaranteeing department or agency the best available protection against possible financial loss consistent with obtaining national defense production expeditiously.

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*The names of the Federal departments or agencies may be obtained from any Federal Reserve Bank.

(f) *Federal Reserve Bank liability.* In arranging for or making any guarantee on behalf of any guaranteeing department or agency, no Federal Reserve Bank shall have any responsibility or accountability except as fiscal agent.

(g) *Other forms and procedures.* From time to time the Board, after consulting guaranteeing departments or agencies, may prescribe other forms and procedures related to the V-loan program. These forms and procedural rules are to be made available through the Federal Reserve Banks.

§ 245.3 Federal Reserve Bank fees and charges.

Each Federal Reserve Bank shall be reimbursed by each guaranteeing department or agency in the usual manner for all expenses and losses incurred by the Reserve Bank in acting as agent on behalf of the department or agency. Regardless of any other provision of law, such expenses shall include attorneys' fees and expenses of litigation. If a Federal Reserve Bank advances its own funds to purchase a guaranteed portion of a loan, when authorized to do so as fiscal agent by the guaranteeing department or agency, it shall charge interest on its advances at the current regular discount rate.

§ 245.4 Maximum rate of interest, guarantee fees, commitment fees, and prepayment penalties.

The Board of Governors of the Federal Reserve System prescribes the following charges for loans guaranteed pursuant to the Defense Production Act of 1950 ("V-loans"):

(a) *Maximum rate of interest.* The maximum rate of interest rate of interest that a financing institution may charge a borrower for a V-loan is the rate that institution currently charges its most creditworthy business customers for loans of comparable maturity, unless the guaranteeing department or ageny determines that the particular loan at a higher rate of interest is necessary for the purposes of the Defense Production Act of 1950.

(b) *Guarantee fees.* The schedule of fees for guaranteeing V-loans is as follows:

Percentage of loan guaranteed	Guarantee fee [1]
70 or less	10
75	15
80	20
85	25
90	30
95	35
Over 95	40-50

[1] Percentage of interest payable by borrower on guaranteed portion of loan.

In any case in which the rate of interest on the loan exceeds 6 per cent, the guarantee fee shall be computed as though the interest rate were 6 per cent. However, at its discretion, a guaranteeing department or agency may increase the 6 per cent ceiling rate to a higher rate (not to exceed the actual rate of interest charged); but if it does so, the policy in this regard must be applied consistently with respect to all applications received while the policy is in effect.

(c) *Commitment fees.* Any commitment fee charged a borrower for a V-loan shall not exceed ½ of 1 per cent per annum, based on the average daily unused balance of the maximum principal amount of the loan. That fee may not begin to accrue prior to the date on which the committed funds are first available to the borrower according to the terms of the loan agreement or other similar financing arrangement. In any such case, the financing institution shall pay to the guaranteeing department or agency, a percentage of the commitment fee (1) based on the guaranteed portion of the loan, and (2) equal to the percentage of the interest on the loan that is payable as a guarantee fee by the financing institution.

(d) *Prepayment penalties.* (1) In the case of a V-loan made primarily for working captial purposes, a financing institution may not charge a penalty for prepayment of the loan but may recover out-of-pocket expenses.

(2) In the case of a V-loan made for the purpose of financing facilities expansion, provision for a prepayment penalty may be made in the loan

agreement if all of the following conditions are met:

(i) The loan has a maturity of 5 years or more;

(ii) The prepayment penalty shall not exceed the rate of interest to be paid by the borrower according to the terms of the loan;

(iii) Provision is made for a graduated decrease in the prepayment penalty as the loan approaches maturity; and

(iv) The loan agreement explicitly provides that the prepayment penalty shall not be applicable in the event the loan is refinanced by or consolidated with another loan that is made or guaranteed by the federal government or any of its agencies.

PART 250—MISCELLANEOUS INTERPRETATIONS

INTERPRETATIONS

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250.260 Miscellaneous interpretations; gold coin and bullion.

BANK SERVICE ARRANGEMENTS

250.300 Kinds of bank servicers subject to Board examination under the Bank Service Corporation Act.
250.301 Scope of investment authority and notification requirement under the Bank Service Corporation Act.
250.302 Applicability of Bank Service Corporation Act to bank credit card service organization.

AUTHORITY: 12 U.S.C. 248(i), unless otherwise noted.

SOURCE: 33 FR 9866, July 10, 1968, unless otherwise noted.

INTERPRETATIONS

§ 250.101 Necessity for Board approval of stock dividend by State member bank.

(a) The opinion of the Board of Governors has been requested as to whether section 5199(b) of the Revised Statutes of the United States, as amended September 8, 1959 (12 U.S.C. 60), requires the Board's approval for the declaration of a stock dividend by a State member bank in an amount which would exceed the total of net profits for the present year combined with the retained net profits of the preceding 2 years. This statute is made applicable to State member banks by the sixth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 324).

(b) The purpose of this provision is to prevent the depletion of the capital structure of a bank by the payment of excessive dividends. Since a stock dividend does not result in the distribution of cash or assets, the Board does not consider the term "dividend" in this statute as including stock dividends. Consequently, the Board's approval for the declaration of a stock dividend is not required.

(12 U.S.C. 60)

§ 250.102 Payment of dividends; effect of net losses.

(a) Section 5199(b) of the Revised Statutes (12 U.S.C. 60), as amended in 1959: *Provides,* That:

> The approval of the Comptroller of the Currency shall be required if the total of all dividends declared by [a national bank] in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding 2 years * * *

Under the sixth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 324), member State banks are required "to conform to the provisions of section 5199(b) * * * with respect to the payment of dividends", except that the approval of the Board of Governors is required in lieu of the approval of the Comptroller.

(b) The question has arisen whether it is necessary in determining whether a bank's dividends in a particular year "exceed the total of its net profits of that year combined with its retained net profits of the preceding two years", to take into consideration the amount of a net loss in the current year or in one or both of the preceding 2 years.

(c) The purpose of the 1959 amendment of section 5199(b) was to prevent a bank from paying a dividend (except with supervisory approval) unless it has on hand, from operations during the 3 latest years, sufficient net profits to cover the proposed dividend. If a net loss for one or more of those 3 years was disregarded in making the calculation called for by section 5199(b), a member State bank could pay dividends, without the approval of the Board of Governors, even though the aggregate results of the 3 latest years' operations was a net deficit. This was precisely the sort of situation in which Congress intended to prevent the payment of a dividend unless the supervisory authority was satisfied that special circumstances justified the proposed dividend.

(d) Accordingly, it is the position of the Board that, in making the calculation required by section 5199(b), it is necessary to take into consideration the actual results of operations during the current year and the 2 preceding years, whether the figures for those years are plus or minus figures. For example, if a bank had

(1) Retained net profits of $30,000 from 1959;

(2) A net loss of $40,000 in 1960 (and dividends of $10,000 were paid in that year, with the Board's approval); and

(3) Net profits of $20,000 in 1961,

It could not pay any dividend in 1961 without the Board's approval, since the calculation required by section 5199(b) would result in a zero figure ($30,000 minus $50,000 plus $20,000). It will be noted that, for the purposes of section 5199, any dividends paid in a loss year must be included in the "net loss" for that year, just as dividends paid in a profitable year must be deducted from "net profits" in calculating "retained net profits".

(12 U.S.C. 60)

§ 250.103 Payment of dividends exceeding net profits to date of declaration.

(a) Section 5199(b) of the Revised Statutes of the United States (12 U.S.C. 60) and the sixth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 324), provide in effect that "the approval of the Comptroller of the Currency (or the Board of Governors) shall be required if the total of all dividends declared by such association (a national bank or a member State bank) in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two years."

(b) The question has been presented whether the Board's approval must be obtained when the amount of a dividend proposed to be declared by a member State bank, prior to the end of the calendar year, would exceed the total of the bank's net profits up to the date of the declaration, combined with its retained net profits of the preceding 2 years.

(c) If the question related only to the literal meaning of words, divorced from the statute's underlying purpose and from the factual situations to which it relates, it might be contended that since the statute refers to "all dividends declared * * * in any calendar year" and "the total of its net profits of that year", its applicability cannot be determined until the calendar year is completed. As explained below, however, such an interpretation is not required by the language of the statute and would substantially defeat its purpose, as revealed by the legislative history; and consequently it is believed that the statute should be construed as relating to dividends declared, and to net profits, in the calendar year up to the date of such declaration.

(d) The purpose of the statute was described as follows by the Senate Banking Committee:

> This provision is designed to restrict the payment of dividends * * * where such payments would result in dissipating needed capital funds. This provision strengthens the regulatory authority of the Comptroller [and the Board of Governors]. Under it, he will be able to prevent the declaration of dividends which are not justified by current and recent accumulated earnings, and which would result in a weakened and undercapitalized bank and violate safe and sound banking practice.
>
> (S. Rep. No. 730, 86th Cong. (Aug. 19, 1959), pp. 6-7)

(1) It seems that Congress had in mind the following test: At the time the dividend is declared, does the bank have available, from profits of the current calendar year and the 2 preceding calendar years, enough profits to cover the dividend? If not, the dividend may not be declared and paid unless the Comptroller or the Board of Governors specifically approves, in view of the circumstances of the particular case.

(2) Bearing in mind the Senate Committee's reference to "dissipating needed capital funds," it is obvious that the danger that a proposed dividend would unduly weaken a bank's capital structure is just as great if the dividend is declared in June as if it is declared in December. If a bank does not have profits on hand sufficient to cover a proposed dividend, the fact that the declaration is made in 1 month rather than in another has little or no bearing on the extent to which payment of the dividend may unduly diminish the capital "cushion" on which depend the bank's continued existence and the safety of its depositors.

(e) An illustration may be helpful. For simplicity, let us assume that a member State bank opened for business on January 1, 1959, with a capital structure of $300,000, as required by the supervisory authorities. The bank had no net profit in 1959 or 1960. Up to June 30, 1961, it still has no net profits, but nevertheless the directors declare a dividend of $20,000 on that date. The bank's capital structure is thereby reduced from $300,000 to $280,000. It seems that this was precisely what Congress intended should not happen unless the Board of Governors approved the dividend, for adequate reasons. An undesirable situation would exist, and the Congressional purpose would be defeated, if such a weakening of the bank's capital structure were permissible if the dividend was declared and paid (without supervisory approval) in June, whereas the same action would involve a violation of the statute if the dividend was declared and paid, instead, in December. This might actually mean that no violation of section 5199(b) could occur except with respect to end-of-year dividends—unless, perhaps, it could be established that the bank's directors, when they declared the dividend earlier in the year, knew (or had reason to believe) that the bank's net profits for the entire year would not be sufficient.

(f) The statutory reference to "all dividends declared * * * in any calendar year" can be interpreted, even from the viewpoint of literal meaning, as referring to dividends declared in a calendar year up to the date of declaration. Particularly because the clear Congressional purpose would otherwise be largely defeated, it is concluded that this is the correct interpretation and that, consequently, the declaration by the member State bank, without the Board's approval, of a dividend in the amount of $20,000 would be in violation of the applicable statutes, since the amount of that dividend would exceed "the total of (the bank's) net profits of that year combined with its retained net profits of the preceding two years."

(12 U.S.C. 60)

§ 250.104 Dividends of State member banks—Meaning of "net profits."

(a) Section 5199(b) of the Revised Statutes of the United States (12 U.S.C. 60), as made applicable to State member banks by the 6th paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 324), provides that:

> The approval of (the Board of Governors) shall be required if the total of all dividends declared by (a State member bank) in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding 2 years, less any required transfers to surplus or a fund for the retirement of any preferred stock.

(b) The term "net profits" is defined in section 5199(c) to mean "the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets, after deducting from the total thereof all current operating expenses, actual losses, accrued dividends on preferred stock, if any, and all Federal and State taxes."

(c) For the purpose of employing a uniform means for the determination of net profits before dividends on common stock, as required by section 5199(b), it is the Board's view that net profits shall be the amount of "net income" determined in accordance with the Report of Income (FR Form 107a), adjusted as set forth hereinafter. The statutory adjustments prescribed by section 5199 require the recognition of actual losses and recoveries on loans and investments and other assets recorded in reserve accounts and the elimination of corresponding provisions for such items entered against income. Further, to ascertain net profits available for common stock cash dividends, net profits for the current year and proceeding 2 years shall be adjusted for preferred stock dividends paid or accrued and for required transfers to surplus or a fund for the retirement of preferred stock.

(d) In light of the prevalent use of accrual accounting by banks, it also may be appropriate to recognize "pro forma" income tax adjustments in the determination of net profits. The adjustment, if any, would be related to the amount of difference between provisions for losses (or reversal of provisions) included in the determination of "net income" and actual net losses or recoveries incorporated in the section 5199(b) calculations. If the "pro forma" income tax adjustment amounts to less than 5 percent of net profits before such adjustment, it need not be recognized.

(e) The following guideline schedule sets forth the most common adjustments required in calculating net profits for section 5199(b) purposes.

COMPUTATIONS OF NET PROFITS FOR PURPOSES OF SECTION 5199(b)

NET INCOME (SCHEDULE A)

Add: (a) Recoveries credited to reserve accounts (Schedule D).

(b) Provision for loan losses (Schedule A).

(c) Any other provisions charged against income (Schedule A), constituting additions to reserve accounts (Schedule D).

(d) Pro forma income tax adjustment (representing decrease of applicable income tax).

SUBTOTAL

Deduct: (a) Losses charged to reserve accounts (Schedule D).

(b) Preferred stock dividends paid or accrued for the period.

(c) Pro forma income tax adjustment (representing increase of applicable income tax).

SUBTOTAL

NET PROFITS AS DEFINED

Deduct: (a) Required transfers to surplus or a fund for the retirement of preferred stock.

(b) Common stock dividends paid or accrued for the period.

SUBTOTAL

Retained net profits available for common stock dividends.

NOTE 1: Schedule references are to supervisory Report of Income (FR Form 107a).

2. Contra elements to applicable captions should be shown in parentheses.

(f) The above schedule for the determination of net profits will also be employed by the Comptroller of the Currency and its use will be uniform for all member banks.

(g) Special factors affecting net profits, such as charge-offs of bank premises in excess of normal annual depreciation or unusual security losses, will be weighed by the Board in consideration of requests by State member banks to declare dividends which would be prohibited by section 5199(b) without Board approval. Accordingly, any unusual charge-offs should be presented for Board consideration.

(h) The objective of section 5199 is to restrict the payment of dividends where such payments would result in dissipating needed capital funds. The law is designed to prevent the declaration of dividends which are not justified by current and recent accumulated earnings and which would result in a weakened and under-capitalized bank and violate safe and sound banking practices.

(Interprets and applies 12 U.S.C. 60)

[37 FR 25486, Dec. 1, 1972]

§ 250.120 Underwriting bonds payable from proceeds of State sales taxes.

(a) The opinion of the Board of Governors of the Federal Reserve System has been requested with respect to the authority of member State banks to underwrite securities issued by States and political subdivisions thereof, with particular reference to $35,750,000 of Public Building Bonds, 1961, Series D, and Public School Plant Facilities Bonds, 1961, Series C, of the State of Washington. The Comptroller of the Currency has held that said bonds are eligible for underwriting by national banks.

(b) Paragraph Seventh of section 5136 of the Revised Statutes (12 U.S.C. 24) provides that a national bank "shall not underwrite any issue of securities", but further provides that this restriction "shall not apply to * * * general obligations of any State or of any political subdivision thereof". The 20th paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335) subjects State member banks to the same limitations with respect to the underwriting of investment securities "as are applicable in the case of national banks under paragraph 'Seventh' of section 5136."

(c) Under the statutory provisions quoted above, member banks are prohibited from underwriting securities issued by a State unless those securities are "general obligations". In the opinion of the Board of Governors, securities are not "general obligations" unless they are backed by the full faith and credit of the issuer. As stated in paragraph 520 of the "Digest of Opinions of the Office of the Comptroller of the Currency", "Securities payable only out of particular funds or out of the obligor's revenues from a particular source are not general obligations." In order to be eligible for underwriting by member banks, the issuer must possess the power of general property taxation and the securities must be supported by that power, as a part of the "full faith and credit" of the issuer.

(d) The bonds in question are issued pursuant to Washington Laws of 1961, Ex Sess., Chapters 3 and 23. These statutes provide that the bonds "shall not be a general obligation of the state of Washington but shall be payable * * * from the proceeds of retail sales taxes * * *." The statutes also provide that "the state undertakes to continue to levy the taxes referred to herein and to fix and maintain said taxes in such amounts as will provide sufficient funds to pay said bonds and interest thereon until all such obligations have been paid in full."

(e) The statutory provisions that the bonds in question "shall not be a general obligation of the State of Washington" and "shall be payable * * * from the proceeds of retail sales taxes" appear to indicate that the bonds will not be supported by the full faith and credit of the State, including its power of general property taxation. If this is correct it follows on the principles previously stated, that these bonds would not be "general obligations" of the State within the meaning of R.S. 5136 and would not be eligible to be underwritten by member banks. The undertaking to levy retail sales taxes that will provide sufficient funds to pay the bonds in full reflects the intent of the State that the bonds (and interest thereon) shall be paid, but it does not negate the plain statement in the Washington statute that the bonds shall be payable from a particular source—namely, the proceeds of retail sales taxes—and are not general obligations.

(f) This conclusion does not conflict with the decision of the Supreme Court of Washington in State of Washington v. Martin, decided August 7, 1963. It was there held that bonds of this nature are "issued upon the credit of the state and are in truth debts of the state." However, the Court made it quite clear that such bonds are not supported by the full faith and credit of the State and its plenary taxing power. Under the State constitutional and statutory provisions dealt with in that decision, bonds of the State of Washington that are payable from a particular source of revenue constitute a debt of that State but are not general obligations thereof.

(g) For these reasons, the Board concludes that the bonds in question are not "general obligations" within the purview of section 5136 of the Revised Statutes and consequently are not eligible for underwriting by State banks that are members of the Federal Reserve System.

(12 U.S.C. 24, 335)

§ 250.121 Application of investment securities regulation to member State banks.

(a) *General.* A revision of the Investment Securities Regulation (Part 1 of this title) was issued recently by the Comptroller of the Currency. Under section 9 of the Federal Reserve Act (12 U.S.C. 335) the regulation is applicable to member State banks as well as to national banks, insofar as it conforms to paragraph Seventh of section 5136 of the Revised Statutes (R.S. 5136; 12 U.S.C. 24).

(b) *Provisions of regulation with respect to "exempt securities".* (1) Paragraph Seventh refers to two areas of securities transactions by a bank: (i) Underwriting and dealing, which are grouped as "underwriting" herein, and (ii) investing (called "purchasing for its own account" in the statute).

(2) The statute contains a general prohibition against a member bank (i) underwriting securities or (ii) investing more than 10 percent of its capital and surplus in the securities of any one obligor. In addition to this 10 percent limitation, the power of national banks and member State banks to purchase securities for investment is subject to "such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe". The term "investment securities" is defined in paragraph Seventh and is subject to "such further definition * * * as may by regulation be prescribed by the Comptroller".

(3) The statute also provides, however, that "The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for [the bank's] own account, investment securities shall not apply to obligations of the United States or general obligations of any State or of any political subdivision thereof," or certain other securities. In other words, national banks and member State banks are legally free (i) to underwrite such "exempt securities" and (ii) to invest therein without regard to the 10 percent limitation mentioned in this section.

(4) The authority of the Comptroller of the Currency to issue investment regulations pursuant to R.S. 5136 does not include authority to exempt additional kinds of securities from the prohibition against underwriting or the prohibition against investing more than 10 percent of capital and surplus in securities of any one obligor. Despite this, § 1.3 of this title, the Comptroller's recent revision of the Investment Securities Regulation, contains a definition of "public security" and § 1.4 of this title states that "A bank may deal in, underwrite, purchase and sell for its own account a public security subject only to the exercise of prudent banking judgment." The term "public security" is so defined that, in effect, the regulation purports to authorize national banks and member State banks to underwrite, and to purchase without limitation on amount, securities that are not exempted by

law from the statutory prohibition against underwriting and against investing in excess of the 10 percent limitation. For example, the terms of the regulation would authorize such banks to underwrite some securities of public corporations that are payable solely out of revenues derived from the operation of a tunnel, turnpike, bridge, or the like, despite the fact that the applicable statute does not exempt such securities from the general prohibition against underwriting by banks.

(5) Since the Comptroller is not authorized by law to expand the category of exempt securities established and described in paragraph Seventh of R.S. 5136, the current regulation does not have the force and effect of law insofar as it attempts to do this. Accordingly, member State banks are informed that, in the opinion of the Board of Governors, the only securities that are exempt from the limitations and restrictions of paragraph Seventh are those specified in R.S. 5136. Unless a particular issue of securities is exempt by virtue of that provision of law, member State banks may not underwrite the issue, and the 10 percent limit is applicable to investments therein. Since so-called "revenue obligations" of the kinds mentioned above, as well as other revenue obligations, are not exempt from the limitations and restrictions of R.S. 5136, it would be unlawful for a member State bank to underwrite such securities or to invest in them in excess of the 10 percent limit.

(c) *Convertible securities.* (1) From time to time corporations issue debentures or similar securities that constitute an obligation to pay a specified dollar amount of principal (as well as interest) and in addition give the holder an option to convert the security into a specified number of shares of the corporation's stock. When the market value of the stock into which such a debenture is convertible is substantially less than the face value of the debenture, the debenture ordinarily will sell at a price that reflects principally its value as a corporate obligation, without regard to the conversion option. However, the market value of the stock sometimes increases to such an extent that the shares into which a debenture is convertible have a market value that is much greater than the face value of the debenture. For example, a number of convertible debentures traded on the New York Stock Exchange sell at prices of $2,000, $3,000, or more, for securities with a face value of $1,000. These prices approximate very closely the current market value of the shares of stock for which the convertible may be exchanged at the holder's option.

(2) A question has arisen as to the circumstances in which a member State bank may purchase convertible debentures for its investment portfolio under the provisions of the Investment Securities Regulation of the Comptroller of the Currency, as recently revised.

(3) Section 1.3(b) of this title defines "investment security" to exclude securities "which are predominantly speculative in nature", so that, under R.S. 5136 and the regulation, the purchase of "predominantly speculative" securities is not permissible. When the market price of a convertible debenture is far in excess of its face value because of the conversion feature, and its price fluctuations parallel the fluctuations in the price of the stock into which it is convertible, the debenture is necessarily speculative. Market conditions may induce price fluctuations that may have no relationship to the quality of the debenture or even of the particular stock into which it can be converted.

(4) Accordingly, it would appear that a bank is prohibited from purchasing convertible debentures in the circumstances described. However, uncertainty as to this matter could arise from the terms of § 1.10 of this title (Comptroller's Revised Regulation), which might be read as indicating that a bank may purchase convertible securities generally, provided that the cost of such a security is written down promptly "to an amount which represents the investment value of the security considered independently of the conversion feature".

(5) Quite apart from questions of interpretation of the revised regulation, however, it is to be noted that the law itself (paragraph Seventh of R.S. 5136) in effect forbids national banks

and member State banks to purchase "any shares of stock of any corporation". When the market price of a convertible security reaches 200 percent or 300 percent of its face value due to a rise in the price of the related stock, purchase of the convertible security is, for practical purposes, equivalent to the purchase of the stock it represents.

(6) In the light of these statutory and regulatory provisions, it is the position of the Board of Governors that a member State bank may not lawfully invest in a convertible security whose price exceeds, by more than an insignificant amount, the investment value of the obligation, considered independently of the conversion feature. Adherence to this principle will avoid violations of the statute and regulation that would occur if a bank were to purchase convertible securities in such circumstances that the security necessarily would be "predominantly speculative in nature", for the reasons described, and the transaction would be tantamount to a purchase of corporate stock.

(12 U.S.C. 24, 335)

§ 250.122 Underwriting of public Authority bonds payable from rents under lease with governmental entity having general taxing powers.

(a) The Board of Governors has been asked whether securities of a public Authority that are to be paid from rents payable under a lease of the Authority's facilities to a governmental entity that possesses general powers of taxation, including property taxation, constitute "general obligations" within the meaning of section 5136 of the U.S. Revised Statutes (12 U.S.C. 24). In cases where this question can be answered in the affirmative, member State banks of the Federal Reserve System may lawfully underwrite and deal in such securities, and invest therein without limitation on amount, as far as Federal banking law is concerned.

(b) The Board understands that the issuing Authorities usually have no taxing powers and that their obligations are not, under pertinent State constitutional and statutory provisions as interpreted by the courts, "debt" of the lessee—that is, the governmental entity with general powers of taxation. However, whether a security constitutes a "debt" for purposes of State law is not determinative as to whether it is a "general obligation" within the meaning of section 5136, a Federal statute. (See § 250.120.)

(c) During recent Hearings before the Committee on Banking and Currency of the House of Representatives, published under the title "Increased Flexibility for Financial Institutions—1963", the Board expressed its understanding of the meaning of the phrase "general obligations of any State or of any political subdivision thereof" as used in section 5136.

(d) As the House Committee was informed, the Board understands that phrase to include "only obligations that are supported by an unconditional promise to pay, directly or indirectly, an aggregate amount which (together with any other funds available for the purpose) will suffice to discharge, when due, all interest on and principal of such obligations, which promise (1) is made by a governmental entity that possesses general powers of taxation, including property taxation, and (2) pledges or otherwise commits the full faith and credit of said promisor; said term does not include obligations not so supported that are to be repaid only from specified sources such as the income from designated facilities or the proceeds of designated taxes." (Hearings, p. 1018.)

(e) A major requirement of the foregoing definition is that a "general obligation" must be supported by general powers of taxation, including property taxation. The Board recognizes, however, that such support by general powers of taxation may be indirect as well as direct.

(f) If a State (or other governmental entity having general powers of taxation) agrees unconditionally to pay to an Authority rentals that will be sufficient and will be used, in all events, to cover required payments of interest and principal on the relevant securities when due, the securities, in the opinion of the Board, are indirectly supported by general taxing powers, and, accordingly, constitute "general obligations" within the meaning of

R.S. 5136. On the other hand, if the lease does not contain an unconditional promise of the State to provide sums sufficient, in all events, to cover required payments of interest and principal on the bonds of the lessor Authority as they become due, the securities cannot be considered "general obligations."

(g) The status of a particular issue of such lease-supported bonds thus depends upon the terms of the lease involved. Where the lease is for a term of years not less than the maximum maturity of the relevant bond issue, and the State unconditionally promises to pay rentals sufficient to cover all payments on the bonds as they become due, the bonds ordinarily will qualify as "general obligations". Where the promise of the State is to pay a fixed dollar rental, the securities will not qualify as "general obligations" unless the lease provides that rental payments in amounts sufficient to service the bonds cannot be expended by the authority for any other purpose than the payment of principal and interest thereon.

(h) This interpretation is intended to indicate the circumstances in which securities issued by public Authorities without taxing powers constitute "general obligations" that are eligible for underwriting by member banks, under R.S. 5136. The status of any particular issue can only be determined through examination of all relevant laws and contracts, in order to ascertain the actual legal and financial arrangements.

(12 U.S.C. 24, 335)

§ 250.123 Underwriting of notes payable from proceeds of subsequent sale of general obligation bonds.

(a) The Board of Governors has received inquiries whether California Bond Anticipation Notes constitute "general obligations" of the State of California within the meaning of paragraph Seventh of section 5136 of the U.S. Revised Statutes (12 U.S.C. 24).

(b) The Board understands that, in anticipation of the sale of general obligation bonds duly authorized, Finance Committees of certain public authorities of the State are empowered, under section 16736 of the Government Code of California, to direct the State Treasurer to issue Bond Anticipation Notes whenever "the committee deems it in the best interests of the State".

(c) Although there appears to be no judicial decision as to the nature of Bond Anticipation Notes under California law, the State Attorney General has issued an opinion (No. 63/182 of Nov. 8, 1963) concluding that the Notes do not constitute "a general obligation of the State in the sense that they are secured by the State General Fund and general taxing power of the State".

(d) While the California Attorney General's opinion is not controlling in a determination as to whether the Notes are "general obligations" within the meaning of section 5136, a Federal statute, it is significant in such a determination insofar as it indicates that the Notes are not secured by the State's "general powers of taxation, including property taxation", a sine qua non of "general obligations" under section 5136. (See § 250.122.)

(e) Although the Board of Governors has recognized that the pledge of the "general powers of taxation, including property taxation" may be indirect as well as direct, with respect to payment of the principal of its Bond Anticipation Notes the State of California does not commit its general taxing powers either directly or indirectly. The principal of such Notes is payable solely from the proceeds of subsequent sale of other securities, which means that the State retires the Notes through the exercise of its borrowing powers as distinct from its taxing powers.

(f) That the general obligation bonds, from the proceeds of whose sale the Notes are expected to be paid, will pledge the State's taxing powers cannot be considered an indirect pledge of that power to secure the Notes, because the pledge of the State's taxing powers attaches to the general obligation bonds only after they are sold and can in no way be utilized for the payment of the Notes. In order for obligations to be secured directly or indirectly by general taxing power, that power must be available for use, if necessary, to provide funds for the required payments of both principal and interest.

(g) The Board of Governors accordingly concludes that California Bond Anticipation Notes do not constitute general obligations within the meaning of section 5136. The Notes, therefore, would not be eligible for underwriting and dealing in by member State banks.

(12 U.S.C. 24, 335)

§ 250.140 Member bank acquisition of stock of another bank.

(a) The Board of Governors has recently considered, in several cases, whether a member bank may lawfully acquire stock of another bank. In some instances, a direct acquisition was involved; in another, the stock was to be purchased by a wholly owned subsidiary of the member bank. In one instance, the bank stock was to be purchased for cash; in others, the consideration was to consist of newly issued shares of stock of the acquiring bank. All of the cases involved acquisition of a majority of the stock of the "subsidiary" bank.

(b) The Board reaffirmed its position, originally taken shortly after enactment of the Banking Act of 1933 (1933 Federal Reserve Bulletin 449), that such acquisitions by member banks are not legally permissible. Section 5136 of the U.S. Revised Statutes (12 U.S.C. 24) forbids a national bank to purchase "for its own account * * * any shares of stock of any corporation." That prohibition is also applicable to State member banks, under section 9 of the Federal Reserve Act (12 U.S.C. 335). Legislative history and judicial interpretations in this field support the view that Congress did not intend to permit national banks or State member banks to acquire, for their own account, the stock of other banks, either directly or through intermediary corporations. The statutory prohibition applies to any voluntary acquisition of the stock of another bank, whether the consideration given for the stock consists of cash, other bank assets, or shares of stock of the acquiring bank.

(c) The Board concluded that such acquisitions would also violate the provisions of section 5155 of the Revised Statutes and section 9 of the Federal Reserve Act (12 U.S.C. 36 and 321) that prohibit the establishment of branches by member banks except under prescribed conditions. Those provisions of law were intended to permit national banks and State member banks to operate additional banking offices only with the prior approval of the Comptroller of the Currency or the Board of Governors, respectively. When one bank owns all or a majority of the stock of another, the offices and resources of the latter are a part of the banking organization owned by, and subject to the control of, the parent bank, despite the existence of separate corporate entities. Consequently, if such acquisitions of stock were permissible, member banks could conduct banking operations through additional offices without obtaining supervisory approval, which would undermine an important regulatory purpose of the Federal statutes relating to multiple-office banking.

(d) This incompatibility with the Federal banking statutes is particularly apparent when the offices of the "subsidiary" bank are situated in places where the acquiring bank may not lawfully establish and maintain direct branches, under applicable State and Federal laws. If a bank in those circumstances could acquire an existing bank or establish a new one, it could effectively circumvent public policy and accomplish indirectly what it could not accomplish directly—namely, ownership and control of banking offices in places (even in another State) where it is forbidden by law to conduct banking operations.

(12 U.S.C. 24, 36, 321, 335)

§ 250.141 Member bank purchase of stock of "operations subsidiaries."

(a) The Board of Governors has reexamined its position that the so-called "stock-purchase prohibition" of section 5136 of the Revised Statutes (12 U.S.C. 24), which is made applicable to member State banks by the 20th paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335), forbids the purchase by a member bank "for its own account of any shares of stock of any corporation" (the statutory language), except as specifically permitted by provisions of Federal law or as comprised within the concept of "such incidental powers as shall be necessary to carry on the business of banking", referred to in the first sentence of paragraph "Seventh" of R.S. 5136.

(b) In 1966 the Board expressed the view that said incidental powers do not permit member banks to purchase stock of "operations subsidiaries"—that is, organizations designed to serve, in effect, as separately-incorporated departments of the bank, performing, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly. (See 1966 Federal Reserve Bulletin 1151.)

(c) The Board now considers that the incidental powers clause permits a bank to organize its operations in the manner that it believes best facilitates the performance thereof. One method of organization is through departments; another is through separate incorporation of particular operations. In other words, a wholly owned subsidiary corporation engaged in activities that the bank itself may perform is simply a convenient alternative organizational arrangement.

(d) Reexamination of the apparent purposes and legislative history of the stock-purchase prohibition referred to above has led the Board to conclude that such prohibition should not be interpreted to preclude a member bank from adopting such an organizational arrangement unless its use would be inconsistent with other Federal law, either statutory or judicial.

(e) In view of the relationship between the operation of certain subsidiaries and the branch banking laws, the Board has also reexamined its rulings on what constitutes "money lent" for the purposes of section 5155 of the Revised Statutes (12 U.S.C. 36), which provides that "The term 'branch' * * * shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business * * * at which deposits are received, or checks paid, or money lent."[1]

(f) The Board noted in its 1967 interpretation that offices that are open to the public and staffed by employees of the bank who regularly engage in soliciting borrowers, negotiating terms, and processing applications for loans (so-called "loan production offices") constitute branches. (1967 Federal Reserve Bulletin 1334.) The Board also noted that later in that year it considered the question whether a bank holding company may acquire the stock of a so-called "mortgage company" on the basis that the company would be engaged in "furnishing services to or performing services for such bank holding company or its banking subsidiaries" (the so-called "servicing exemption" of section 4(c)(1)(C) of the Bank Holding Company Act; 12 U.S.C. 1843). In concluding affirmatively, the Board stated that "the appropriate test for determining whether the company may be considered as within the servicing exemption is whether the company will perform as principal any banking activities—such as receiving deposits, paying checks, extending credit, conducting a trust department, and the like. In other words, if the mortgage company is to act merely as an adjunct to a bank for the purpose of facilitating the bank's operations, the company may appropriately be considered as within the scope of the servicing exemption." (1967 Federal Reserve Bulletin 1911; 12 CFR 225.122.)

(g) The Board believes that the purposes of the branch banking laws and the servicing exemption are related. Generally, what constitutes a branch does not constitute a servicing organization and, vice versa, an office that only performs servicing functions should not be considered a branch. (See 1958 Federal Reserve Bulletin 431, last paragraph; 12 CFR 225.104(e).) When viewed together, the above-cited interpretations on loan production offices and mortgage companies represent a departure from this principle. In reconsidering the laws involved, the Board has concluded that a test similar to that adopted with respect to the servicing exemption under the Bank Holding Company Act is appropriate for use in determining whether or not what constitutes "money [is] lent" at a particular office, for the purpose of the Federal branch banking laws.

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[1] In the Board's judgment, the statutory enumeration of three specific functions that establish branch status is not meant to be exclusive but to assure that offices at which any of these functions is performed are regarded as branches by the bank regulatory authorities. In applying the statute the emphasis should be to assure that significant banking functions are made available to the public only at governmentally authorized offices.

(h) Accordingly, the Board considers that the following activities, individually or collectively, do not constitute the lending of money within the meaning of section 5155 of the revised statutes: Soliciting loans on behalf of a bank (or a branch thereof), assembling credit information, making property inspections and appraisals, securing title information, preparing applications for loans (including making recommendations with respect to action thereon), soliciting investors to purchase loans from the bank, seeking to have such investors contract with the bank for the servicing of such loans, and other similar agent-type activities. When loans are approved and funds disbursed solely at the main office or a branch of the bank, an office at which only preliminary and servicing steps are taken is not a place where "money [is] lent". Because preliminary and servicing steps of the kinds described do not constitute the performance of significant banking functions of the type that Congress contemplated should be performed only at governmentally approved offices, such office is accordingly not a branch.

(i) To summarize the foregoing, the Board has concluded that, insofar as Federal law is concerned, a member bank may purchase for its own account shares of a corporation to perform, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly. Also, a member bank may establish and operate, at any location in the United States, a "loan production office" of the type described herein. Such offices may be established and operated by the bank either directly, or indirectly through a wholly-owned subsidiary corporation.

(j) This interpretation supersedes both the Board's 1966 ruling on "operations subsidiaries" and its 1967 ruling on "loan production offices", referred to above.

(12 U.S.C. 24, 36, 321, 335)

[33 FR 11813, Aug. 21, 1968; 43 FR 53414, Nov. 16, 1978]

§ 250.142 Meaning of "obligor or maker" in determining limitation on securities investments by member State banks.

(a) From time to time the New York State Dormitory Authority offers issues of bonds with respect to each of which a different educational institution enters into an agreement to make "rental" payments to the Authority sufficient to cover interest and principal thereon when due. The Board of Governors of the Federal Reserve System has been asked whether a member State bank may invest up to 10 percent of its capital and surplus in each such issue.

(b) Paragraph Seventh of section 5136 of the U.S. Revised Statutes (12 U.S.C. 24) provides that "In no event shall the total amount of the investment securities of any one obligor or maker, held by [a national bank] for its own account, exceed at any time 10 per centum of its capital stock * * * and surplus fund". That limitation is made applicable to member State banks by the 20th paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335).

(c) The Board considers that, within the meaning of these provisions of law, "obligor" does not include any person that acts solely as a conduit for transmission of funds received from another source, irrespective of a promise by such person to pay principal or interest on the obligation. While an obligor does not cease to be such merely because a third person has agreed to pay the obligor amounts sufficient to cover principal and interest on the obligations when due, a person that promises to pay an obligation, but as a practical matter has no resources with which to assume payment of the obligation except the amounts received from such third person, is not an "obligor" within the meaning of section 5136.

(d) Review of the New York Dormitory Authority Act (N.Y. Public Authorities Law sections 1675-1690), the Authority's interpretation thereof, and materials with respect to the Authority's "Revenue Bonds, Mills College of Education Issue, Series A" indicates that the Authority is not an "obligor" on those and similar bonds. Although the Authority promises to make all payments of principal and interest, a bank that invests in such bonds cannot be reasonably considered as doing so in reliance on the promise and responsibility of the Authority. Despite the Authority's obligation to make payments on the bonds, if the particular college fails to perform its agreement to make rental payments to the Authority sufficient to cover all payments of bond principal and interest when due, as a practical matter the sole source of funds for payments to the bondholder is the particular college. The Authority has general borrowing power but no resources from which to assure repayment of any borrowing except from the particular colleges, and rentals received from one college may not be used to service bonds issued for another.

(e) Accordingly, the Board has concluded that each college for which the Authority issues obligations is the sole "obligor" thereon. A member State bank may therefore invest an amount up to 10 percent of its capital and surplus in the bonds of a particular college that are eligible investments under the Investment Securities Regulation of the Comptroller of the Currency (12 CFR Part 1), whether issued directly or indirectly through the Dormitory Authority.

(12 U.S.C. 24, 335)

§ 250.143 Member bank purchase of stock of foreign operations subsidiaries.

(a) In a previous interpretation, the Board determined that a State member bank would not violate the "stock-purchase prohibition" of section 5136 of the Revised Statutes (12 U.S.C. 24 ¶ 7) by purchasing and holding the shares of a corporation which performs "at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly".[1] (1968 *Federal Reserve Bulletin* 681, 12 CFR 250.141). The Board of Governors has been asked by a State member bank whether, under that interpretation, the bank may establish such a so-called "operations subsidiary" outside the United States.

(b) In the above interpretation the Board viewed the creation of a wholly-owned subsidiary which engaged in activities that the bank itself could perform directly as an alternative organizational arrangement that would be permissible for member banks unless "its use would be inconsistent with other Federal law, either statutory or judicial".

(c) In the Board's judgment, the use by member banks of operations subsidiaries outside the United States would be clearly inconsistent with the statutory scheme of the Federal Reserve Act governing the foreign investments and operations of member banks. It is clear that Congress has given member banks the authority to conduct operations and make investments outside the United States only through gradually adopting a series of specific statutory amendments to the Federal Reserve Act, each of which has been carefully drawn to give the Board approval, supervisory, and regulatory authority over those operations and investments.

(d) As part of the original Federal Reserve Act, national banks were, with the Board's permission, given the power to establish foreign branches.[2]

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[1] National banking associations are prohibited by section 5136 of the Revised Statutes from purchasing and holding shares of any corporation except those corporations whose shares are specifically made eligible by statute. This prohibition is made applicable to State member banks by section 9 ¶ 20 of the Federal Reserve Act (12 U.S.C. 335).

[2] Under section 9 of the Federal Reserve Act, State member banks, subject, of course, to any necessary approval from their State banking authority, may establish foreign branches on the same terms and subject to the same limitations and restrictions as are applicable to the establishment of branches by national banks (12 U.S.C. 321). State member banks may also purchase and hold

Continued

In 1916, Congress amended the Federal Reserve Act to permit national banks to invest in international or foreign banking corporations known as "Agreement" Corporations, because such corporations were required to enter into an agreement or understanding with the Board to restrict their operations. Subject to such limitations or restrictions as the Board may prescribe, such Agreement corporations may principally engage in international or foreign banking, or banking in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions of the United States. In 1919 the enactment of section 25(a) of the Federal Reserve Act (the "Edge Act") permitted national banks to invest in federally chartered international or foreign banking corporations (so-called Edge Corporations) which may engage in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions. Edge Corporations may only purchase and hold stock in certain foreign subsidiaries with the consent of the Board. And in 1966, Congress amended section 25 of the Federal Reserve Act to allow national banks to invest directly in the shares of a foreign bank. In the Board's judgment, the above statutory scheme of the Federal Reserve Act evidences a clear Congressional intent that member banks may only purchase and hold stock in subsidiaries located outside the United States through the prescribed statutory provisions of sections 25 and 25(a) of the Federal Reserve Act. It is through these statutorily prescribed forms of organization that member banks must conduct their operations outside the United States.

(e) To summarize, the Board has concluded that a member bank may only organize and operate "operations subsidiaries" at locations in the United States. Investments by member banks in foreign subsidiaries must be made either with the Board's permission under section 25 of the Federal Reserve Act or, with the Board's consent, through an Edge Corporation subsidiary under section 25(a) of the Federal Reserve Act or through an Agreement Corporation subsidiary under section 25 of the Federal Reserve Act. In addition, it should be noted that bank holding companies may acquire the shares of certain foreign subsidiaries with the Board's approval under section 4(c)(13) of the Bank Holding Company Act. These statutory sections taken together already give member banks a great deal of organizational flexibility in conducting their operations abroad.

(Interprets and applies 12 U.S.C. 24, 335)

[40 FR 12252, Mar. 18, 1975]

§ 250.160 Federal funds transactions.

(a) It is the position of the Board of Governors of the Federal Reserve System that, for purposes of provisions of law administered by the Board, a transaction in Federal funds involves a loan on the part of the "selling" bank and a borrowing on the part of the "purchasing" bank.

(b) For example, for purposes of section 23A of the Federal Reserve Act (12 U.S.C. 371c), a "sale" of Federal funds by a member bank, whether State or national, to an affiliate of the member bank is subject to the limitations prescribed in that section.

(12 U.S.C. 371c)

§ 250.161 Capital notes and debentures as "capital," "capital stock," or "surplus."

(a) The Board of Governors has been presented with the question whether capital notes or debentures issued by banks, that are subordinated to deposit liabilities, may be considered as part of a bank's "capital stock," "capital," or "surplus," for pur-

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shares of stock in Edge or Agreement Corporations and foreign banks because national banks, as a result of specific statutory exceptions to the stock purchase prohibitions of section 5136, can purchase and hold stock in these Corporations or banks.

poses of various provisions of the Federal Reserve Act that impose requirements or limitations upon member banks.

(b) A "note" or "debenture" is an evidence of debt, embodying a promise to pay a certain sum of money on a specified date. Such a debt instrument issued by a commercial bank is quite different from its "stock," which evidences a proprietary or "equity" interest in the assets of the bank. Likewise, the proceeds of a note or debenture that must be repaid on a specified date cannot reasonably be regarded as "surplus funds" of the issuing corporation.

(c) Federal law (12 U.S.C. 51c) expressly provides that the term "capital," as used in provisions of law relating to the capital of national banks, shall mean "the amount of unimpaired common stock plus the amount of preferred stock outstanding and unimpaired." In addition, when Congress in 1934 deemed it desirable to permit certain notes and debentures—those sold by State banks to the Reconstruction Finance Corporation—to be considered as "capital" or "capital stock" for purposes of membership in the Federal Reserve System, Congress felt it necessary to implement that objective by a specific amendment to section 9 of the Federal Reserve Act (12 U.S.C. 321). These plain evidences of Congressional intent compel the conclusion that, for purposes of statutory limitations and requirements, "capital" notes and debentures may not properly be regarded as part of either "capital" or "capital stock."

(d) Accordingly, under the law, capital notes or debentures do not constitute "capital," "capital stock," or "surplus" for the purposes of provisions of the Federal Reserve Act, including, among others, those that limit member banks with respect to loans to affiliates (12 U.S.C. 371c), purchases of investment securities (12 U.S.C. 24, 335), investments in bank premises (12 U.S.C. 371d), loans on stock or bond collateral (12 U.S.C. 248(m)), deposits with nonmember banks (12 U.S.C. 463), and bank acceptances (12 U.S.C. 372, 373), as well as provisions that limit the amount of paper of one borrower that may be discounted by a Federal Reserve Bank for any member bank (12 U.S.C. 84, 330, 345).

(12 U.S.C. 24, 84, 248, 321, 330, 335, 345, 371c, 371d, 372, 373, 463)

§ 250.162 Undivided profits as "capital stock and surplus".

(a) The Board of Governors has reexamined the question whether a member bank's undivided profits may be considered as part of its "capital stock and surplus", as that or a similar term is used in provisions of the Federal Reserve Act that limit member banks with respect to the following: Loans to affiliates (12 U.S.C. 371c), purchases of investment securities (12 U.S.C. 335), loans on stock or bond collateral (12 U.S.C. 248(m)), deposits with nonmember banks (12 U.S.C. 463), bank acceptances (12 U.S.C. 372, 373), investments in and by Edge and Agreement corporations (12 U.S.C. 601, 615, 618), and the amount of paper of one borrower that may be discounted or accepted as collateral for an advance by a Federal Reserve Bank (12 U.S.C. 330, 345, 347).

(b) Upon such reexamination the Board concludes that its negative view expressed in 1964 is unnecessarily restrictive in the light of the Congressional purpose in establishing limitations on bank activities in terms of a bank's capital structure. Accordingly, the Board has decided that, for the purposes of the limitations set forth above, undivided profits may be included as part of "capital stock and surplus".

(c) As used herein, the term "undivided profits" includes paid-in or earned profits (unearned income must be deducted); reserves for loan losses or bad debts, less the amount of tax which would become payable with respect to the tax-free portion of the reserve if such portion were transferred from the reserve; valuation reserves for securities; and reserves for contingencies. It does not include reserves for dividends declared or reserves for taxes, interest and expenses.

(Interprets and applies 12 U.S.C. 24, 84, 330, 335, 345, 347, 371c, 372, 373, 464, 601, 615, 618)

[36 FR 5673, Mar. 26, 1971]

§ 250.163 Inapplicability of amount limitations to "ineligible acceptances."

(a) Since 1923, the Board has been of the view that "the acceptance power of State member banks is not necessarily confined to the provisions of section 13 (of the Federal Reserve Act), inasmuch as the laws of many States confer broader acceptance powers upon their State banks, and certain State member banks may, therefore, legally make acceptances of kinds which are not eligible for rediscount, but which may be eligible for purchase by Federal reserve banks under section 14." 1923 FR bulletin 316, 317.

(b) In 1963, the Comptroller of the Currency ruled that "[n]ational banks are not limited in the character of acceptances which they may make in financing credit transactions, and bankers' acceptances may be used for such purpose, since the making of acceptances is an essential part of banking authorized by 12 U.S.C. 24." *Comptroller's manual* 7.7420. Therefore, national banks are authorized by the Comptroller to make acceptances under 12 U.S.C. 24, although the acceptances are not the type described in section 13 of the Federal Reserve Act.

(c) A review of the legislative history surrounding the enactment of the acceptance provisions of section 13, reveals that Congress believed in 1913, that it was granting to national banks a power which they would not otherwise possess and had not previously possessed. See remarks of Congressmen Phelan, Helvering, Saunders, and Glass, 51 *Cong. Rec.* 4676, 4798, 4885, and 5064 (September 10, 12, 13, and 17 of 1913). Nevertheless, the courts have long recognized the evolutionary nature of banking and of the scope of the "incidental powers" clause of 12 U.S.C. 24. See ***Merchants Bank*** v. ***State Bank***, 77 U.S. 604 (1870) (upholding the power of a national bank to certify a check under the "incidental powers" clause of 12 U.S.C. 24).

(d) It now appears that, based on the Board's 1923 ruling, and the Comptroller's 1963 ruling, both State member banks and national banks may make acceptances which are not of the type described in section 13 of the Federal Reserve Act. Yet, this appears to be a development that Congress did not contemplate when it drafted the acceptance provisions of section 13.

(e) The question is presented whether the amount limitations of section 13 should apply to acceptances made by a member bank that are not of the type described in section 13. (The amount limitations are of two kinds: (1) A limitation on the amount that may be accepted for any one customer, and (2) a limitation on the aggregate amount of acceptances that a member bank may make.) In interpreting any Federal statutory provision, the primary guide is the intent of Congress, yet, as noted earlier, Congress did not contemplate in 1913, the development of so-called "ineligible acceptances." (Although there is some indication that Congress did contemplate State member banks' making acceptances of a type not described in section 13 [remarks of Congressman Glass, 51 *Cong. Rec.* 5064], the primary focus of congressional attention was on the acceptance powers of national banks.) In the absence of an indication of congressional intent, we are left to reach an interpretation that is in harmony with the language of the statutory provisions and with the purposes of the Federal Reserve Act.

(f) Section 13 authorizes acceptances of two types. The seventh paragraph of section 13 (12 U.S.C. 372) authorizes certain acceptances that arise out of specific transactions in goods. (These acceptances are sometimes referred to as "commercial acceptances.") The 12th paragraph of section 13 authorizes member banks to make acceptances "for the purpose of furnishing dollar exchange as required by the usages of trade" in foreign transactions. (Such acceptances are referred to as "dollar exchange acceptances.") In the 12th paragraph, there is a 10 percent limit on the amount of dollar exchange acceptances that may be accepted for any one customer (unless adequately secured) and a limitation on the aggregate amount of dollar exchange acceptances that a member bank may make. (The 12th paragraph, in imposing these limitations, refers to the acceptance of "such drafts or bills of exchange referred to (in) this paragraph.") Similarly, the seventh paragraph imposes on commercial acceptances a parallel 10 percent per-customer limitation, and limitations on the aggregate amount of commercial acceptances. (In the case of the aggregate limitations, the seventh paragraph states that "no bank shall accept such bills to an amount" in excess of the aggregate limit; the reference to "such bills" makes clear that the limitation is only in respect of drafts or bills of exchange of the specific type described in the seventh paragraph.)

(g) Based on the language and parallel structure of the 7th and 12th paragraphs of section 13, and in the absence of a statement of congressional intent in the legislative history, the Board concludes that the per-customer and aggregate limitations of the 12th paragraph apply only to acceptances of the type described in that paragraph (dollar exchange acceptances), and the per-customer and aggregate limitations of the 7th paragraph (12 U.S.C. 372) apply only to acceptances of the type described in that paragraph.

(Interprets and applies 12 U.S.C. 372 and the 12th paragraph of sec. 13 of the Federal Reserve Act, which paragraph is omitted from the United States Code)

[38 FR 13728, May 25, 1973]

§ 250.164 Bankers' acceptances.

(a) Section 207 of the Bank Export Services Act (Title II of Pub. L. 97-290) ("BESA") raised the limits on the aggregate amount of eligible bankers' acceptances ("BAs") that may be created by an individual member bank from 50 per cent (or 100 per cent with the permission of the Board) of its paid up and unimpaired capital stock and surplus ("capital") to 150 per cent (or 200 per cent with the permission of the Board) of its capital. Section 207 also prohibits a member bank from creating eligible BAs for any one person in the aggregate in excess of 10 per cent of the institution's capital. This section of the BESA applies the same limits applicable to member banks to U.S. branches and agencies of foreign banks that are subject to reserve requirements under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105). The Board is clarifying the proper meaning of the seventh paragraph of section 13 of the Federal Reserve Act, as amended by the BESA.

(b)(1) This section of the BESA provides that any portion of an eligible BA created by an institution subject to the BA limitations contained therein ("covered bank") that is conveyed through a participation to another covered bank shall not be included in the calculation of the creating bank's BA limits. The amount of the participation is to be applied to the calculation of the BA limits applicable to the covered bank receiving the participation. Although a covered bank that has reached its 150 or 200 percent limit can continue to create eligible acceptances by conveying participations to other covered banks, Congress has in effect imposed an aggregate limit on the eligible acceptances that may be created by *all* covered banks equal to the sum of 150 or 200 percent of the capital of all covered banks.

(2) The Board has clarified that under the statute an eligible BA created by a covered bank that is conveyed through a participation to an institution that is *not* subject to the limitations of this section of the BESA continues to be included in the calculation of the limits applicable to the creating covered bank. This will ensure that the total amount of eligible BAs that may be created by covered banks does not exceed the limitations established by Congress. In addition, this ensures that participations in acceptances are not used as a device for the avoidance of reserve requirements. Finally, this promotes the Congressional intent, with respect to covered banks, that foreign and domestic banks be on an equal footing and under the same legal requirements.

(3) In addition, the amount of a participation received by a covered bank from an institution not covered by the limitations of the Act is to be included in the calculation of the limits applicable to the covered bank receiving the participation. This result is based upon the language of the statute which includes within a covered bank's limits on eligible BAs outstanding the amount of participations received by the covered bank. This provision re-

flects Congressional intent that a covered bank not be obligated on eligible bankers' acceptances, and participations therein, for an amount in excess of 150 or 200 percent of the institution's capital.

(c) The statute also provides that eligible acceptances growing out of domestic transactions are not to exceed 50 percent of the aggregate of all eligible acceptances authorized for covered banks. The Board has clarified that this 50 percent limitation is applicable to the maximum permissible amount of eligible BAs (150 or 200 percent of capital), regardless of the bank's amount of eligible acceptances outstanding. The statutory language prior to the BESA amendment made clear that covered banks could issue eligible acceptances growing out of domestic transactions up to 50 percent of the amount of the total permissible eligible acceptances the bank could issue. The legislative history of the BESA indicates no intent to change this domestic acceptance limitation.

(d) The statute also provides that for the purpose of the limitations applicable to U.S. branches and agencies of foreign banks, a branch's or agency's capital is to be calculated as the dollar equivalent of the capital stock and surplus of the parent foreign bank as determined by the Board. The Board has clarified that for purposes of calculating the BA limits applicable to U.S. branches and agencies of foreign banks, the identity of the parent foreign bank is generally the same as for reserve requirement purposes; that is, the bank entity that owns the branch or agency most directly. The Board has also clarified that the procedures currently used for purposes of reporting to the Board on the Annual Report of Foreign Banking Organizations, Form FR Y-7, are also to be used in the calculation of the acceptance limits applicable to U.S. branches and agencies of foreign banks. (The FR Y-7 generally requires financial statements prepared in accordance with local accounting practices and an explanation of the accounting terminology and the major features of the accounting standards used in the preparation of the financial statements.) Conversions to the dollar equivalent of the worldwide capital of the foreign bank should be made periodically, but in no event less frequently than quarterly. In this regard, the Board recognizes the need to be flexible in dealing with the effect of foreign exchange rate fluctuations on the calculation of the worldwide capital of the parent foreign bank. Each foreign bank is to be responsible for coordinating the BA activity of its U.S. branches and agencies (including the aggregation of such activity) and establishing procedures that ensure that examiners will be able readily to determine compliance with the BESA limits.

(Sec. 13, Federal Reserve Act (12 U.S.C. 372))

[48 FR 28975, June 24, 1983]

§ 250.165 Bankers' acceptances: definition of participations.

(a)(1) Section 207 of the Bank Export Services Act (Title II of Pub. L. 97-290) ("BESA") raised the limits on the aggregate amount of eligible bankers' acceptances ("BAs") that may be created by a member bank from 50 percent (or 100 percent with the permission of the Board) of its paid up and unimpaired capital stock and surplus ("capital") to 150 percent (or 200 percent with the permission of the Board) of its capital. Section 207 also prohibits a member bank from creating eligible BAs for any one person in the aggregate in excess of 10 percent of the institution's capital. Eligible BAs growing out of domestic transactions are not to exceed 50 percent of the aggregate of all eligible acceptances authorized for a member bank. This section of the BESA applies the same limits applicable to member banks to U.S. branches and agencies of foreign banks that are subject to reserve requirements under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105).[1]

(2) This section of the BESA also provides that any portion of an eligible BA created by a covered bank ("senior bank") that is conveyed through a "participation agreement"

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[1] The institutions subject to the BA limitations of BESA will hereinafter be referred to as "covered banks."

to another covered bank ("junior bank") shall *not* be included in the calculation of the senior bank's bankers' acceptance limits established by section 207 of BESA.[2] However, the amount of the participation *is* to be included in the BA limits applicable to the junior bank. The language of the statute does not define what constitutes a participation agreement for purposes of the applicability of the BESA limitations. However, the statute does authorize the Board to further define any of the terms used in section 207 of the BESA (12 U.S.C. 372(g)). The Board is clarifying the term participation for purposes of the BA limitations of the BESA.

(b) The legislative history of section 207 of the BESA indicates that Congress intended that the junior bank be obligated to the senior bank in the event that the account party defaults on its obligation to pay, but that the junior bank need not also be obligated to pay the holder of the acceptance at the time the BA is presented for payment. H. Rep. No. 97-629, 97th Cong., 2nd Sess. 15 (1982); 128 *Cong. Rec.* H 4647 (daily ed. July 27, 1982) (remarks by Rep. Barnard); and 128 *Cong. Rec.* H 8462 (daily ed. October 1, 1982) (remarks by Rep. Barnard). The legislative history also indicates that Congress intended that eligible BAs in which participations had been conveyed not be required to indicate the name(s) (or interest(s)) of the junior bank(s) on the acceptance in order for the BA to be excluded from the BESA limitations applicable to the senoir bank. 128 *Cong. Rec.* S 12237 (daily ed. September 24, 1982) (remarks of Senators Heinz and Garn); and 128 *Cong. Rec.* H 4647 (daily ed. July 27, 1982) (remarks of Rep. Barnard).

(c)(1) In view of Congressional intent with regard to what constitutes a participation in an eligible BA, the Board has determined that, for purposes of the BESA limits, a participation must satisfy the following two *minimum* requirements:

(i) A written agreement entered into between the junior and senior bank under which the junior bank acquires the senior bank's claim against the account party to the extent of the amount of the participation that is enforceable in the event that the account party fails to perform in accordance with the terms of the acceptance; and

(ii) The agreement between the junior and senior bank provides that the senior bank obtains a claim against the junior bank to the extent of the amount of the participation that is enforceable in the event the account party fails to perform in accordance with the terms of the acceptance.

(2) Consistent with Congressional intent, the minimum requirements do not require the junior bank to be obligated to pay the holder of the acceptance at the time the BA is presented for payment. Similarly, the minimum requirements do not require the name(s) or interest(s) of the junior bank(s) to appear on the face of the acceptance.

(3) An eligible BA that is conveyed through a participation that does not satisfy these minimum requirements would continue to be included in the BA limits applicable to the senior bank. Further, an eligible BA conveyed to a covered bank through a participation that provided for additional rights and obligations among the parties would be excluded from the BESA limitations of the senior bank provided the minimum requirements were satisfied.

(4) A participation structured pursuant to these minimum requirements would be as follows: Upon the conveyance of the participation, the senior bank retains its entire obligation to pay the holder of the BA at maturity. The senior bank has a claim against the junior bank to the extent of the amount of the participation that is enforceable in the event the account party fails to perform in accordance with the terms of the acceptance. Similarly, the junior bank has a corresponding claim against the account party to the extent of the amount of

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[2] The use of the terms "senior bank" and "junior bank" has no implications regarding priority of claims. These terms merely represent a shorthand method of identifying the depository institution that has created the acceptance and conveyed the participation (senior bank) and the depository institution that has received the participation (junior bank).

the participation that is enforceable in the event the account party fails to perform in accordance with the terms of the acceptance.

(d)(1) The Board is not requiring the senior bank and the account party specifically to agree that the senior bank's rights are assignable because the Board believes such rights to be assignable even in the absence of an explicit agreement.

(2) The junior and senior banks may contract among themselves as to which party(ies) have the responsibility for administering the arrangement, enforcing claims, or exercising remedies.

(e) The Board recognizes that both the junior bank's claim on the account party and the senior bank's claim on the junior bank involve risk. Therefore, it is essential that these risks be assessed by the banks involved in accordance with prudent and sound banking practices. The examiners will in the normal course of the examination process review the risk assessment procedures instituted by the banks. The junior bank should review the creditworthiness of each account party when the junior bank acquires a participation and the senior bank should review on an ongoing basis the creditworthiness of the junior bank. Junior bank agreement to rely exclusively upon the credit judgment of the senior bank and purchase on an ongoing basis from the senior bank all participations in BAs regardless of the identity of the account party is not appropriate in view of the risks involved. However, in those cases involving a participation between a parent bank and its Edge affiliate where the credit review for both entities is performed by the parent bank, the Edge Corporation should maintain documentation indicating that it concurs with the parent bank's analysis and that the acceptance participation is appropriate for inclusion in the Edge Corporation's portfolio.

(f) Similarly, the Board has determined that it is appropriate to include the risks incurred by the senior bank in assessing the senior bank's capital and the risks incurred by the junior bank in assessing the junior bank's capital.

(g) In view of this clarification of the issues relating to participations in BAs, the Board encourages the private sector to develop standardized forms for BAs and participations therein that clearly delineate the rights and responsibilities of the relevant parties.

(Sec. 13, Federal Reserve Act (12 U.S.C. 372))

[48 FR 57109, Dec. 28, 1983]

§ 250.180 Reports of changes in control of management.

(a) Under a statute enacted September 12, 1964 (Pub. L. 88-593; 78 Stat. 940) all insured banks are required to report promptly (1) changes in the outstanding voting stock of the bank which will result in control or in a change in control of the bank and (2) any instances where the bank makes a loan or loans, secured, or to be secured, by 25 percent or more of the outstanding voting stock of an insured bank.

(b) Reports concerning changes in control of a State member bank are to be made by the president or other chief executive officer of the bank, and shall be submitted to the Federal Reserve Bank of its district.

(c) Reports concerning loans by an insured bank on the stock of a State member bank are to be made by the president or other chief executive officer of the lending bank, and shall be submitted to the Federal Reserve Bank of the State member bank on the stock of which the loan was made.

(d) Paragraphs 3 and 4 of this legislation specify the information required in the reports which, in cases involving State member banks, should be addressed to the Vice President in Charge of Examinations of the appropriate Federal Reserve Bank.

(12 U.S.C. 1817)

§ 250.181 Reports of change in control of bank management incident to a merger.

(a) A State member bank has inquired whether Pub. L. 88-593 (78 Stat. 940) requires reports of change in control of bank management in situations where the change occurs as an incident in a merger.

(b) Under the Bank Merger Act of 1960 (12 U.S.C. 1828(c)), no bank with Federal deposit insurance may merge or consolidate with, or acquire the assets of, or assume the liability to pay deposits in, any other insured bank without prior approval of the appropriate Federal bank supervisory agency. Where the bank resulting from any such transaction is a State member bank, the Board of Governors is the agency that must pass on the transaction. In the course of consideration of such an application, the Board would, of necessity, acquire knowledge of any change in control of management that might result. Information concerning any such change in control of management is supplied with each merger application and, in the circumstances, it is the view of the Board that the receipt of such information in connection with a merger application constitutes compliance with Pub. L. 88-593. However, once a merger has been approved and completely effectuated, the resulting bank would thereafter be subject to the reporting requirements of Pub. L. 88-593.

(12 U.S.C. 1817)

§ 250.182 Terms defining competitive effects of proposed mergers.

Under the Bank Merger Act (12 U.S.C. 1828(c)), a Federal Banking agency receiving a merger application must request the views of the other two banking agencies and the Department of Justice on the competitive factors involved. Standard descriptive terms are used by the Board, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency. The terms and their definitions are as follows:

(a) The term *"monopoly"* means that the proposed transaction must be disapproved in accordance with 12 U.S.C. 1828(c)(5)(A).

(b) The term *"substantially adverse"* means that the proposed transaction would have anticompetitive effects which preclude approval unless the anticompetitive effects are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served as specified in 12 U.S.C. 1828(c)(5)(B).

(c) The term *"adverse"* means that proposed transaction would have anticompetitive effects which would be material to the decision but which would not preclude approval.

(d) The term *"no significant effect"* means that the anticompetitive effects of the proposed transaction, if any, would not be material to the decision.

(12 U.S.C. 1828(c))

[45 FR 45257, July 3, 1980]

§ 250.200 Investment in bank premises by holding company banks.

(a) The Board of Governors has been asked whether, in determining under section 24A of the Federal Reserve Act (12 U.S.C. 371d) how much may be invested in bank premises without prior Board approval, a State member bank, which is owned by a registered bank holding company, is required to include indebtedness of a corporation, wholly owned by the holding company, that is engaged in holding premises of banks in the holding company system.

(b) Section 24A provides, in part, as follows:

> Hereafter * * * no State member bank, without the approval of the Board of Governors of the Federal Reserve System, shall (1) invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank or (2) make loans to or upon the security of the stock of any such corporation, if the aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation which is an affiliate of the bank, as defined in section 2 of the Banking Act of 1933, as amended [12 U.S.C. 221a], will exceed the amount of the capital stock of such banks.

(c) A corporation that is owned by a holding company is an "affiliate of each of the holding company's majority-owned banks as that term is defined in said section 2. Therefore, under the explicit provisions of section 24A, each State member bank, any part of whose premises is owned by such an affiliate, must include the affiliate's total indebtedness in determining whether a proposed premises investment by the bank would cause the aggregate figure to exceed the amount of the bank's capital stock, so that the Board's prior approval would be required. Where the affiliate holds the premises of a number of the holding company's banks, the amount of the affiliate's indebtedness may be so large that Board approval is required for every proposed investment in bank premises by each majority-owned State member bank, to which the entire indebtedness of the affiliate is required to be attributed. The Board believes that, in these circumstances, individual approvals are not essential to effectuate the purpose of section 24A, which is to safeguard the soundness and liquidity of member banks, and that the protection sought by Congress can be achieved by a suitably circumscribed general approval.

(d) Accordingly the Board hereby grants general approval for any investment or loan (as described in section 24A) by any State member bank, the majority of the stock of which is owned by a registered bank holding company, if the proposed investment or loan will not cause either (1) all such investments and loans by the member bank (together with the indebtedness of any bank premises subsidiary thereof) to exceed 100 percent of the bank's capital stock, or (2) the aggregate of such investments and loans by all of the holding company's subsidiary banks (together with the indebtedness of any bank premises affiliates thereof) to exceed 100 percent of the aggregate capital stock of said banks.

(12 U.S.C. 221a, 371d)

§ 250.220 Whether member bank acting as trustee is prohibited by section 20 of the Banking Act of 1933 from acquiring majority of shares of mutual fund.

(a) The Board recently considered whether section 20 of the Banking Act of 1933 (12 U.S.C. 377) would prohibit a member bank, while acting as trustee of a tax exempt employee benefit trust or trusts, from, under the following circumstances, acquiring a majority of the shares of an open-end investment company ("Fund") registered under the Investment Company Act of 1940, or more than 50 percent of the number of Fund's shares voted at the preceding election of directors of the Fund.

(b) The bank has acted as trustee, since December 1963, pursuant to a trust agreement with a county medical society to administer its group retirement program, under which individual members of the society could participate in accordance with the provisions of the Self-Employed Individuals Tax Retirement Act of 1962 (commonly referred to as "H.R. 10").

(c) Under the trust agreement as presently constituted, each employer, who is a participating member of the medical society, directs the bank to invest his contributions to the retirement plan in such proportions as he may elect in insurance or annuity contracts or in a diversified portfolio of securities and other property. The diversified portfolio held by the bank is invested and administered by the bank solely at the direction of a committee of the medical society.

(d) It has now been proposed that the trust agreement be amended to provide that all investments constituting the trust fund, apart from insurance and annuity contracts, will be made exclusively in shares of a single open-end investment company to be named in the trust agreement and that the assets constituting the diversified portfolio now held by the bank, as trustee, will be exchanged for the Fund's shares. The bank will, in addition to holding the shares of the Fund, allocate income and dividends to the accounts of the various participants in the retirement program, invest and reinvest income and dividends, and perform other ministerial functions.

(e) In addition, it is proposed to amend the trust agreement so that voting of the shares held by the bank as trustee will be controlled exclusively by the participants. Under the proposed amendment, the bank will sign all proxies prior to mailing them to the participants, "it being intended that the Participant(s) shall vote the proxies notwithstanding the fact that the Trustee is the owner of the shares * * *".

(f) The bank believes that amendments are now under consideration that will also require investment of the assets of these plans exclusively in the Fund's shares. Accordingly, the bank may eventually own the Fund's shares in several separate trust accounts and in an aggregate amount equal to a majority of the Fund's shares.

(g) Section 20 of the Banking Act of 1933 provides in relevant part that "no member bank shall be affiliated in any manner described in section 2(b) hereof with any corporation * * * engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation of stocks * * * or other securities: * * *".

(h) Section 2(b) defines the term "affiliate" to include "any corporation, business trust, association or other similar organization (1) Of which a member bank, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 per centum of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; * * *".

(i) The Board has previously taken the position, in an interpretation involving the term "affiliate" under the Banking Act of 1933, that it would not require a member bank to obtain and publish a report of a corporation the majority of the stock of which is held by the member bank as executor or trustee, provided that the member bank holds such stock subject to control by a court or by a beneficiary or other principal and that the member bank may not lawfully exercise control of such stock independently of any order or direction of a court, beneficiary or other principal. 1933 Federal Reserve Bulletin 651. The rationale of that interpretation—which was reaffirmed by the Board in 1957—would appear to be equally applicable to the facts in the present case. In the circumstances, and on the basis of the Board's understanding that the bank will not vote any of Fund's shares or control in any manner the election of any of its directors, trustees, or other persons exercising similar functions, the Board has concluded that the situation in question would not fall within the purpose or coverage of section 20 of the Banking Act of 1933 and, therefore, would not involve a violation of the statute.

§ 250.221 Issuance and sale of short-term debt obligations by bank holding companies.

(a) The opinion of the Board of Governors of the Federal Reserve System has been requested recently with respect to the proposed sale of "thrift notes" by a bank holding company for the purpose of supplying capital to its wholly-owned nonbanking subsidiaries.

(b) The thrift notes would bear the name of the holding company, which in the case presented, was substantially similar to the name of its affiliated banks. It was proposed that they be issued in denominations of $50 to $100 and initially be of 12-month or less maturities. There would be no maximum amount of the issue. Interest rates would be variable according to money market conditions but would presumably be at rates somewhat above those permitted by Regulation Q ceilings. There would be no guarantee or indemnity of the notes by any of the banks in the holding company system and, if required to do so, the holding company would place on the face of the notes a negative representation that the purchase price was not a deposit, nor an indirect obligation of banks in the holding company system, nor covered by deposit insurance.

(c) The notes would be generally available for sale to members of the public, but only at offices of the holding company and its nonbanking subsidiaries. Although offices of the holding company may be in the same building or quarters as its banking offices, they would be physically separated from the banking offices. Sales would be made only by officers or employees of the holding company and its nonbanking subsidiaries. Initially, the notes would only be offered in the State in which the holding company was principally doing business, thereby complying with the exemption provided by section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. 77c) for "intra-state" offerings. If it was decided to offer the notes on an interstate basis, steps would be taken to register the notes under the Securities Act of 1933. Funds from the sale of the notes would be used only to supply the financial needs of the nonbanking subsidiaries of the holding company. These nonbank subsidiaries are, at present, a small loan company, a mortgage banking company and a factoring company. In no instance would the proceeds from the sale of the notes be used in the bank subsidiaries of the holding company nor to maintain the availability of funds in its bank subsidiaries.

(d) The sale of the thrift notes, in the specific manner proposed, is an activity described in section 20 of the Banking Act of 1933 (12 U.S.C. 377), that is, "the issue, flotation, underwriting, public sale or distribution * * * of * * * notes, or other securities". Briefly stated, this statute prohibits a member bank to be affiliated with a company "engaged principally" in such activity. Since the continued issuance and sale of such securities would be necessary to permit maintenance of the holding company's activities without substantial contraction and would be an integral part of its operations, the Board concluded that the issuance and sale of such notes would constitute a principal activity of a holding company within the spirit and purpose of the statute. (For prior Board decisions in this connection, see 1934 Federal Reserve Bulletin 485, 12 CFR 218.104, 12 CFR 218.105 and 12 CFR 218.101.)

(e) In reaching this conclusion, the Board distinguished the proposed activity from the sale of short-term notes commonly known as "commercial paper", which is a recognized form of financing for bank holding companies. For purposes of this interpretation, "commercial paper" may be defined as notes, with maturities not exceeding nine months, the proceeds of which are to be used for current transactions, which are usually sold to sophisticated institutional investors, rather than to members of the general public, in minimum denominations of $10,000 (although sometimes they may be sold in minimum denominations of $5,000). Commercial paper is exempt from registration under the Securities Act of 1933 by reason of the exemption provided by section 3(a)(3) thereof (15 U.S.C. 77c). That exemption is inapplicable where the securities are sold to the general public (17 CFR 231.4412). The reasons for such exemption, taken together with the abuses that gave rise to the passage of the Banking Act of 1933 ("the Glass-Steagall Act"), have led the Board to conclude that the issuance of commercial paper by a bank holding company is not an activity intended to be included within the scope of section 20.

(Interprets and applies 12 U.S.C. 377 and 1843)

[Reg. Y, 38 FR 35231, Dec. 26, 1973]

§ 250.240 Applicability of section 23A of the Federal Reserve Act to transactions between a member State bank and its "operations subsidiary".

(a) The Board of Governors has recently considered whether section 23A of the Federal Reserve Act (12 U.S.C. 371c) applies to extensions of credit by a member State bank to its operations subsidiary.

(b) Section 23A imposes limitations (in terms of security and amount) on a federally insured bank's loans to and investments in its affiliates. The principal purpose of section 23A is to safeguard the resources of a bank against misuse for the benefit of organizations under common control with the bank. It was designed to prevent a bank from risking too large an amount in affiliated enterprises and to assure that extensions of credit to affiliates will be repaid—out of marketable collateral, if necessary.

(c) Since 1968 the Board has permitted member banks to establish and own operations subsidiaries—that is, organizations designed to serve, in effect, as separately incorporated departments of the bank, performing, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly (12 CFR 250.141). Since an operations subsidiary is in effect a part of, and subject to the same restrictions as, its parent bank, there appears to be no reason to limit transactions between the bank and such subsidiary any more than transactions between departments of a bank.

(d) Accordingly, the Board has concluded that a credit transaction by a member State bank with its operations subsidiary (the authority for which is based on the 1968 ruling) is not a "loan or * * * extension of credit" of the kind intended to be restricted and regulated by section 23A and is, therefore, outside the purview of that section.

[35 FR 10201, June 23, 1970]

§ 250.250 Applicability of section 23A of the Federal Reserve Act to a member State bank's purchase of, or participation in, a loan originated by a mortgage banking affiliate.

(a) A question has been raised as to whether a member bank's purchase, without recourse, and at face value, of any mortgage note, or participation therein, from a mortgage banking subsidiary of its parent bank holding company at the inception of the underlying mortgage loan involves a "loan" or "extension of credit" from the member bank to the affiliate within the meaning of section 23A of the Federal Reserve Act (12 U.S.C. 371c). In the given circumstances, the affiliate originated the mortgage loans at premises other than an office of the member bank and hence was not a company furnishing services to or performing services for the holding company or its banking subsidiaries within the meaning of section 4(c)(1)(C) of the Bank Holding Company Act (12 U.S.C. 1843(c)(1)(C)). Loans or extensions of credit to the affiliate were therefore not entitled to exemption from the provisions of section 23A by virtue of subsection (1) of the final paragraph thereof.

(b) Paragraph 4 of section 23A provides that the term "extension of credit" shall be deemed to "include" the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse, excepting the acquisition of such paper by a member bank from another bank without recourse. In previously interpreting the statutory provision from which this provision is derived (section 6 of the Bank Holding Company Act of 1956, repealed July 1, 1966), the Board concluded that "discount" in the context of the statute meant "purchase" and that the purchase of notes, bills of exchange, conditional sales contracts or similar paper from an affiliate was subject to the prohibitions of the statute. (1958 Federal Reserve Bulletin 260.) Further, the Board notes that the definition in section 23A is illustrative rather than exclusive. The Board believes that the purposes of section 23A justify a broad construction of the definition of "extension of credit" to include certain purchases of obligations, even though the purchases are not made at a discount from face value. A bank's financing of the working capital needs of a mortgage banking affiliate may occur through outright purchases of obligations, and the types of abuses with which section 23A is concerned are likewise possible in such circumstances, since such transactions between affiliates could result in an undue risk to the financial condition of the purchasing bank.

(c) The Board is of the opinion that the purchase by a member State bank of a mortgage note, or participation therein, from a mortgage banking affiliate would involve a loan or extension of credit to the affiliate if the latter had either made, or committed itself to make, the loan or extension of credit evidenced by the note prior to the time when the member bank first obligated itself, by commitment or otherwise, to purchase the loan or a participation therein. However, there would be no loan or extension of credit by the member bank to its mortgage banking affiliate if the member bank's commitment to purchase the loan, or a participation therein, is obtained by the affiliate within the context of a proposed transaction, or series of proposed transactions, in anticipation of the affiliate's commitment to make such loan(s), and is based upon the bank's independent evaluation of the credit worthiness of the mortgagor(s). In these latter circumstances, the member bank would be taking advantage of an investment opportunity rather than being impelled by any improper incentive to alleviate working capital needs of the affiliate that are directly attributable to excessive outstanding commitments.

(d) The Board cautions, however, that it would regard a blanket advance commitment by a member State bank to purchase from its mortgage banking affiliate a stipulated amount of loans, or an amount thereof exceeding defined credit lines of the affiliate, that bears no reference to specific proposed transactions, as involving an unsound banking practice, unless the commitment is conditioned upon compliance of loans made thereunder with the requirements of section 23A. It would not suffice to condition such a commitment upon the bank's ultimate approval of the credit standing of the various mortgagors. That blanket commitment would have the inherent tendency, in the context of an affiliate relationship, to cause the bank to relax sound credit judgment concerning the individual loans involved when the affiliate was in need of bank financing, thereby resulting in an inappropriate risk to the soundness of the bank.

(Interprets and applies 12 U.S.C. 371c)

[39 FR 28975, Aug. 13, 1974]

§ 250.260 Miscellaneous interpretations; gold coin and bullion.

The Board has received numerous inquiries from member banks relating to the repeal of the bank on ownership of gold by United States citizens. Listed below are questions and answers which affect member banks and relate to the responsibilities of the Federal Reserve System.

(a) May gold in the form of coins or bullion be counted as vault cash in order to satisfy reserve requirements? No. Section 19(c) of the Federal Reserve Act requires that reserve balances be satisfied either by a balance maintained at the Federal Reserve Bank or by vault cash, consisting of United States currency and coin. Gold in bullion form is not United States currency. Since the bullion value of United States gold coins far exceeds their face value, member banks would not in practice distribute them over the counter at face value to satisfy customer demands.

(b) Will the Federal Reserve Banks perform services for member banks with respect to gold, such a safekeeping or assaying? No.

(c) Will a Federal Reserve Bank accept gold as collateral for an advance to a member bank under section 10(b) of the Federal Reserve Act? No.

[39 FR 45254, Dec. 31, 1974]

BANK SERVICE ARRANGEMENTS

§ 250.300 Kinds of bank servicers subject to Board examination under the Bank Service Corporation Act.

Summary. The performance of bank services for State member banks is subject to the Board's regulation and examination, regardless of the nature of the bank servicer, including servicers that are national banks; State nonmember insured banks; non-profit, no-stock credit card servicing organizations; and servicing subsidiaries of bank holding companies.

Text. (a) Since the enactment of the Bank Service Corporation Act (the "Act") (12 U.S.C. 1861-1865), the Board has on several occasions considered whether performance of "bank services" (as that term is defined in section 1(b) of the Act) for State member banks is subject to regulation and examination by the Board under section 5 of the Act if (1) the bank servicer is not a "bank service corporation" (as that term is defined in the Act), or (2) the bank servicer is a bank itself. In each instance, based on the reasoning set forth below, the Board expressed the view that section 5 of the Act applied to any organization that performed bank services for State member banks, including national banks; another State member bank; State nonmember insured banks; servicing subsidiaries of bank holding companies; and non-profit, no stock credit card servicing organizations.

(b) The Senate Committee on Banking and Currency stated with regard to section 5 of the Act, as enacted in 1962, that the Federal supervisory agencies "must be able to examine all of the banks' records, and they must be able to exercise proper supervision over all the banks' activities, whether performed by the banks' employees on their premises or by anyone else on or off the banks' premises. This examination and this supervision cannot be frustrated by a transfer of the banks' records to some other organization or by having some other organization carry out all or part of the banks' functions." (S. Rep. No. 2105, 87th Cong. 3 (1962)). Similarly, the Committee on Banking and Currency of the House of Representatives stated that "it would obviously be unwise to permit banks to avoid the examination and supervision of vital banking functions by the simple expedient of farming out such functions." (H.R. Rep. No. 2062, 87th Cong. 3 (1962)).

(c) Section 5 of the Act is not limited by its terms to "bank service corporations" as defined in the Act; nor, in the Board's opinion based on the legislative history of the Act, should such a limitation be implied. The Board concludes that the performance of bank services for State member banks by organizations that are not bank service corporations is also subject to Board regulation and examination.

(d) If the bank servicer is a national bank or a State nonmember insured bank, its performance of bank services for State member banks is subject to Board regulation and examination, despite the fact that the servicer is subject primarily to regulation and examination by one of the other Federal banking agencies. By the same token, the performance of bank services by a State member bank for a national bank or State nonmember insured bank is subject to regulation and examination by the Comptroller of the Currency or the Federal Deposit Insurance Corporation, respectively. The purpose of section 5 of the Act is to make certain that the appropriate Federal banking agency will be able effectively to exercise its responsibilities with respect to a bank subject primarily to its supervision.

(e) It is important to note that the scope of the Board's regulation and examination under section 5 of the Act does not extend to all affairs of the bank servicer, but only to the "bank services" performed for a State member bank and only to the same extent as if the services were being performed by the State member bank itself on its own premises.

[44 FR 12969, Mar. 9, 1979]

§ 250.301 Scope of investment authority and notification requirement under the Bank Service Corporation Act.

Summary. (a) The authority of State member banks under the Bank Service Corporation Act to invest in bank service corporations is limited to investments in corporations that perform "bank services" solely.

(b) A State member bank is required by the Act to notify the Board only of the performance of "bank services" for it.

(c) "Bank services" will not usually be regarded as including legal, advisory, and administrative services, such as transportation or guard services.

Text (a) Section 2(a) of the Bank Service Corporation Act (12 U.S.C. 1861–65) provides that "no limitation or prohibition otherwise imposed by any provision of Federal law exclusively relating to banks shall prevent any two or more banks from investing not more than 10 per centum of the paid-in and unimpaired capital and unimpaired surplus of each of them in a bank service corporation." This 10 percent investment ceiling applies to loans and other advances of funds, as well as the purchase of stock. The Act, however, does not authorize a State bank to invest in a bank service corporation if the bank is not permitted to do so under the applicable State law.

(b) "Bank service corporation" is defined in section 1(c) of the Act to mean "a corporation organized to perform bank services for two or more banks, each of which owns part of the capital stock of such corporation, and at least one of which is subject to examination by a Federal supervisory agency." Section 4 of the Act states that "no bank service corporation may engage in any activity other than the performance of bank services for banks." Thus, the investment authority created by section 2(a) is limited to corporations that are engaged solely in the provision of "bank services" to banks, as that term is defined in the Act.

(c) In addition to its grant of investment authority, the Act also requires State member banks to notify the Board within 30 days of the execution of a contract for "bank services" or the actual provision of such services, whichever occurs first. Moreover, the Act authorizes the Board to regulate and examine the performance of "bank services." Thus, the scope of the Act's notification and examination requirements also is limited to "bank services."

(d) The term "bank services" is defined in section 1(b) of the Act to mean "services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank."

(e) Bearing importantly upon the meaning of "bank services" is the following quotation from the Report of the Senate Committee on Banking and Currency: "The authority to examine and supervise banks is broad and must be vigorously exercised. At the same time sound discretion must be used. Banks have always employed others to do many things for them, and they will have to continue to do so, and the bill is not intended to prevent this or to make it more difficult. For example, banks have employed lawyers to prepare trust and estate accounts and to prosecute judicial proceedings for the settlement of such accounts. Banks have employed accountants to prepare earnings statements and balance sheets. Banks have employed public relations and advertising firms. And banks have employed individuals or firms to perform all kinds of administrative activities, including armored car and other transportation services, guard services and, in many cases, other mechanical services needed to run the bank's buildings. It is not expected that the bank supervisory agencies would find it necessary to examine or regulate any of these agents or representatives of a bank, except under the most unusual circumstances. The authority is intended to be limited to banking functions as such." (S. Rep. No. 2105, 87th Cong. 3 (1962)).

(f) On the basis of the Act's definition of "bank services", the limitation contained in section 4 of the Act, and the preceding quotation from the Act's legislative history, it is apparent that the term "bank services" is essentially limited to clerical and similar services. For example, the term would not usually be regarded as including legal, advisory, and administrative services, such as transportation or guard services.

(g) Thus, State member banks generally may rely on the Act to justify investment only in a corporation that is engaged solely in performing one or more of the services contained in the definition of "bank services" in section 1(b), or a service similar to one of those services, and only if those services are provided solely to banks. Investment in a corporation providing any other services, such as the type of services described in the above quotation from the Act's legislative history, generally is not permitted on the basis of this Act, unless such services are legitimately incidental to the provision of "bank services" by that corporation.

(h) Since the notification required by section 5 of the Act, as amended, also is based on the provision of "bank services," such notification need only be provided with regard to the provision of one or more of the services enumerated in section 1(b) of the Act or a service similar to one of those services.

[44 FR 12969, Mar. 9, 1979]

§ 250.302 Applicability of Bank Service Corporation Act to bank credit card service organization.

Summary. Although a non-profit, no-stock service organization in which no bank has made an investment is not a "bank service corporation" as defined in the Bank Service Corporation Act, that organization's credit card servicing activities are "bank services" as defined in the Act and thus subject to the notification requirement of section 5 of the Act.

Text. (a) The Board of Governors has considered whether the Bank Service Corporation Act (12 U.S.C.

1861-1865), is applicable where a bank credit card plan of a State member bank and other banks used the facilities of a non-profit, no-stock service organization.

(b) The functions of the service organization include the following: (1) Performing cardholder accounting for participating banks; (2) developing information concerning each credit card and holder, including such holder's current balance owing to the card issuing bank and the amount of such balance that is delinquent; (3) assisting in procedures relating to the presentation and settlement of drafts and credit memoranda; (4) developing procedures relating to credit card security control; (5) upon telephonic request, advising merchants and participating banks respecting credit authorizations above certain specified limits; and (6) compiling lists of participating merchants.

(c) The Board expressed the view that because the service organization has no stock and the State member bank does not otherwise "invest" therein by "the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment" (section 1(d) of the Act), the service organization is not a "bank service corporation" within the meaning of section 1(c) of the Act.

(d) However, the Board concluded that the functions described above do constitute "bank services" as defined in section 1(b) of the Act. Accordingly, the State member bank is required to notify the Board (through the appropriate Federal Reserve Bank) of the performance of the services for the bank in accordance with section 5 of the Act.

[44 FR 12970, Mar. 9, 1979]

PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

Sec.
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AUTHORITY: 5 U.S.C. 552.

SOURCE: 32 FR 9516, July 1, 1967, unless otherwise noted.

§ 261.1 Basis and scope.

This part is issued by the Board of Governors of the Federal Reserve System (the "Board") pursuant to the requirement of section 552 of Title 5 of the United States Code that every Federal agency shall publish in the FEDERAL REGISTER, for the guidance of the public, descriptions of the established places at which, the officers from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

§ 261.2 Definitions.

(a) *Information of the Board.* For purposes of this part, the term "information of the Board" means all information coming into the possession of the Board or of any member thereof, or of any Federal Reserve Bank, or of any officer, employee, or agent of the Board or of any Federal Reserve Bank, in the performance of functions for or on behalf of the Board, including functions delegated by the Board pursuant to Part 265 of this chapter.

(b) *Records of the Board.* For purposes of this part, the term "records of the Board" means rules, statements, opinions, orders, memoranda, letters, reports, accounts, and other papers containing information of the Board that constitute part of the Board's official files.

§ 261.3 Published information.

(a) *Federal Register.* To the extent required by sections 552 and 553 of Title 5 of the United States Code, and subject to the provisions of §§ 261.5 and 261.6, the Board publishes in the FEDERAL REGISTER for the guidance of the public, in addition to this part,

(1) Descriptions of its central and field organization;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all

formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Board;

(5) Every amendment, revision, or repeal of the foregoing; and

(6) General notices of proposed rule making.

The Board also publishes in the FEDERAL REGISTER notice of receipt of applications pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1842), and notices of formal hearings ordered by the Board.

(b) *Annual Reports.* The Board's Annual Report to Congress pursuant to section 10 of the Federal Reserve Act (12 U.S.C. 247), which is made public immediately after its submission to Congress, contains a full account of the Board's operations during the year, an economic review of the year, and legislative recommendations to Congress. As required by law, the Annual Report includes (1) a complete record of the policy actions taken by the Board and the Federal Open Market Committee, showing the votes taken thereon and the reasons underlying such actions (12 U.S.C. 247a); (2) material pertaining to the administration of the Board's functions under the Bank Holding Company Act of 1956 (12 U.S.C. 1844); and (3) material pertaining to bank mergers approved by the Board under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)).

Pursuant to section 114 of the Truth in Lending Act (15 U.S.C. 1613) the Board reports annually to the Congress concerning the administration of its functions under the Act, and includes such recommendations as it deems necessary or appropriate, and its assessment of the extent to which compliance is being achieved. An annual report is also submitted pursuant to the Freedom of Information Act (5 U.S.C. 552) with regard to requests for information under that Act.

(c) *Federal Reserve Bulletin.* In the Federal Reserve Bulletin, which is issued monthly, the Board publishes economic and statistical information; special articles on subjects of economic interest; regulations, statements of general policy, and interpretations of laws and regulations of general interest to the public; notices of actions by the Board on certain types of applications, such as applications for membership in the Federal Reserve System; and orders and accompanying statements of the Board with respect to certain types of adjudications. Some material that is published in the Bulletin is released in advance of such publication, examples being certain regulations, interpretations, orders and opinions, a monthly summary of business conditions, the Board's index of industrial production, and certain other statistical series.

(d) *Other published information.* As required by section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)), the Board issues weekly (1) a statement of the condition of the Federal Reserve Banks; (2) a statement listing certain applications received by or on behalf of the Board and actions on such applications by the Board, or on behalf of the Board pursuant to authority delegated under Part 265 of this chapter, as well as other matters issued, adopted, or promulgated by the Board; and (3) a statement showing changes in the banking structure resulting from mergers and the establishment of branches. From time to time, the Board issues statements to the press regarding particular monetary and credit actions, regulatory actions, actions with respect to certain types of applications, and other matters. In addition, it issues various publications, the more important of which are listed in the monthly Federal Reserve Bulletin. Among such publications is a loose-leaf compilation of Interpretations of the Board of Governors of the Federal System.

(e) *Obtaining published information.* Anyone may subscribe to the Federal Reserve Bulletin at the rate therein indicated. A copy of each issue of the Bulletin is sent without charge to each member bank. Current or back issues of the Bulletin, Annual Reports, rules, regulations, and certain other published information may be examined at the offices of the Board or any Federal Reserve Bank, and copies, if in stock, are supplied by the Board at prescribed charges or at no cost.

(f) *Index of Board Action.* There is available to the public upon request to the Secretary of the Board, at a charge not to exceed the direct cost of duplication, copies of an index providing identifying information as to any matter issued, adopted or promulgated by the Board between July 4, 1967 and February 19, 1975. Furthermore, the Board publishes and distributes to the public, at a cost not to exceed the direct cost of duplication, a weekly index providing identifying information as to any matter issued, adopted or promulgated by the Board after February 19, 1975.

[32 FR 9516, July 1, 1967, as amended at 40 FR 7620, Feb. 21, 1975; 42 FR 56719, Oct. 28, 1977]

§ 261.4 Records available to the public upon request.

(a) *General rule.* All records of the Board, whether or not published under § 261.3, are made available to any person, upon request, for inspection and copying in accordance with the provisions of this section and subject to the limitations stated in §§ 261.5 and 261.6. Records falling within the exemptions from disclosure set forth in section 552(b) of Title 5 of the United States Code and in § 261.6 may nevertheless be made available in accordance with this section to the fullest extent consistent, in the Board's judgment, with the effective performance of the Board's statutory responsibilities and with the avoidance of injury to a public or private interest intended to be protected by such exemptions.

(b) *Opinions, orders, statements of policy, interpretations, and staff manuals and instructions.* Subject to the provisions of §§ 261.5 and 261.6, the Board makes available for inspection and copying (1) all final opinions (including concurring and dissenting opinions) and orders made in the adjudication of cases, including such opinions and orders made pursuant to authority delegated by the Board under Part 265 of this chapter; (2) statements of policy and interpretations adopted by the Board that are not published in the FEDERAL REGISTER; and (3) administrative staff manuals and instructions to staff that affect any member of the public. However, to the extent required to prevent a clearly unwarranted invasion of personal privacy, the Board deletes identifying details in any material of the kinds above described; and in each such case the justification for such deletion is explained in writing. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public as to any material described in this paragraph which is issued, adopted, or promulgated after July 4, 1967.

(c) *Other records.* Subject to the provisions of §§ 261.5 and 261.6, records of the Board not covered by paragraph (b) of this section, including a record of the final votes of members of the Board in any Board proceeding, are made available for inspection and copying to any person upon request.

(d) *Obtaining access to records.* Records of the Board subject to this section are available for inspection and copying during regular business hours at the offices of the Board of Governors of the Federal Reserve System, Federal Reserve Building, 20th Street and Constitution Avenue NW., Washington, D.C. 20551, or, in the case of records containing information required to be disclosed under section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78), at the offices of the Federal Deposit Insurance Corporation or at any Federal Reserve Bank. Every request for access to records of the Board, other than those containing information required under section 12 of the Securities Exchange Act, shall be submitted in writing to the Secretary of the Board, shall state the name and address of the person requesting access to such records, shall clearly indicate whether such request is an initial request or an appeal from a denial of information requested pursuant to the Freedom of Information Act, and shall describe such records in a manner reasonably sufficient to permit their identification without undue difficulty. The Secretary of the Board (or, in his absence, an Assistant Secretary designated by the Secretary) shall determine within ten working days after receipt of a request for access to records of the Board whether to comply with such request; and he shall immediately notify the requesting party of his decision, of the reasons therefor, and of the right of the requesting party to appeal to the Board any refusal to make available the requested records of the Board.

(e) *Appeal of denial of access to records of the Board.* Any person who is denied access to records of the Board, properly requested in accordance with paragraph (d) of this section, may file, with the Secretary of the Board, within ten days of notification of such denial, a written request for review of such denial. The Board or such member or members as the Board may designate, shall make a determination with respect to any such appeal within 20 working days of its receipt, shall immediately notify the appealing party of the decision on the appeal and of the right to seek court review of any decision which upholds, in whole or in part, the refusal of the Secretary of the Board to make available the requested records; and such determination shall not be subject to the procedure prescribed in § 265.3 of this chapter with respect to review of actions taken pursuant to authority delegated by the Board.

(f) *Extension of time requirements in unusual circumstances.* In unusual circumstances as provided in 5 U.S.C. section 552(a)(6)(b), the time limitations imposed upon the Secretary of the Board or the Board in paragraphs (d) and (e) of this section may be extended by written notice to the requesting party for a period of time not to exceed a total of ten working days.

(g) *Fee schedule.* A person requesting access to or copies of particular records shall pay the costs of searching for and copying such records at the rate of $10 per hour for searching and 10 cents per standard page for copying. With respect to information obtainable only by processing through a computer or other information systems program, a person requesting such information shall pay a fee not to exceed the direct and reasonable cost of retrieval and production of the information requested. Detailed schedules of such charges are available upon request from the Secretary of the Board. Documents may be furnished without charge or at a reduced charge where the Secretary of the Board or such person as he may designate determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public or where total charges are less than $2.

[32 FR 9516, July 1, 1967, as amended at 40 FR 7621, Feb. 21, 1975]

§ 261.5 Deferment of availability of certain information.

(a) *Deferment of availability.* In some instances, certain types of information of the Board are not published in the FEDERAL REGISTER or made available for inspection and copying until after such period of time as the Board may determine to be reasonably necessary to avoid the effects described in paragraph (b) of this section. For example, such deferment of publication or availability of information to the public may occasionally be necessary with respect to information relating to the determination of monetary or credit policies, including but not limited to discount rates, reserve requirements of member banks, maximum interest rates payable by member banks on deposits, and margin requirements.

(b) *Reasons for deferment of availability.* Publication of, or public access to, certain information of the Board may be deferred because earlier disclosure of such information would:

(1) Interfere with the accomplishment of the objectives of the Board's actions in the discharge of its statutory functions;

(2) Permit speculators and others to gain unfair profits or other unfair advantages by speculative trading in securities or otherwise;

(3) Interfere with the orderly execution of the objectives or policies of other Government agencies;

(4) Result in unnecessary or unwarranted disturbances in the securities markets; or

(5) Interfere with the orderly conduct of the foreign affairs of the United States.

§ 261.6 Exemptions from disclosure.

(a) *General rule.* Except as otherwise provided in this part or as may be specifically authorized by the Board, information in the records of the Board that is not available to the public through other sources will not be published in the FEDERAL REGISTER or made available for inspection and copying if such information:

(1) Is specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and is in fact properly classified pursuant to such Executive order, or is specifically exempted from disclosure by statute (other than section 552b of Title 5 United States Code) provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(2) Is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, the Board or a Federal Reserve Bank, relating to the affairs of any bank or affiliate thereof, bank holding company or subsidiary thereof, broker, finance company, or any other person engaged, or proposing to engage, in the business of banking, extending credit, or managing or controlling banks;

(3) Is privileged or relates to the business, personal, or financial affairs of any person and is furnished in confidence: *Provided, however,* That, following notice to the person furnishing such information, the Board may make any information furnished in confidence in connection with an application for Board approval of any transaction available to the public in accordance with § 261.4(c), and, to the extent it deems necessary and without prior notice to such person, the Board may comment on such information in any opinion or statement issued to the public in connection with a decision of the Board with respect to which such information is relevant;

(4) Is contained in investigatory files compiled for law enforcement purposes (but only to the extent provided in the Freedom of Information Act (5 U.S.C. 552(b)(7))), including information relating to proceedings for (i) the issuance of a cease-and-desist order, or order of suspension or removal, under the Financial Institutions Supervisory Act of 1966; (ii) the termination of membership of a State bank in the Federal Reserve System pursuant to section 9 of the Federal Reserve Act (12 U.S.C. 327); (iii) the suspension of a bank from use of the credit facilities of the Federal Reserve System pursuant to section 4 of the Federal Reserve Act (12 U.S.C. 301); and (iv) the granting or revocation of any approval, permission, or authority, except to the extent provided in this Part and except as provided in Part 262 of this chapter concerning bank holding company and bank merger applications;

(5) Relates solely to the internal personnel rules and practices of other internal practices of the Board;

(6) Is contained in personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(7) Is contained in interagency or intraagency memoranda or letters that would not be routinely available by law to a private party in litigation with the Board, including but not limited to memoranda, reports, and other documents prepared by the staffs of the Board or of the Federal Reserve Banks, and records of deliberations and discussions at meetings of the Board or of any committee of the Board or of the Board's staff.

(b)(1) *Information available to supervised institutions and other Government agencies.* A copy of each report of examination of each State member bank and of each bank holding company is made available by the appropriate Federal Reserve Bank to the bank or company examined. Such reports and other appropriate information relating to such a bank or company are made available, upon request, by the Director of the Board's Division of Supervision and Regulation to the Comptroller of the Currency and the Federal Deposit Insurance Corporation, and by the appropriate Federal Reserve Bank to the Regional Comptroller of the Currency, the regional representative of the Federal Deposit Insurance Corporation and the State governmental authority having general supervision of such bank or company. Such reports and other information may be made available by the Board to other agencies of the United States for use where necessary in the performance of their official duties. All reports or other information made available pursuant to this paragraph shall remain the property of the Board and, except as otherwise provided in this part, no person, agency, or authority to whom the information is made available, or any officer, director, or employee thereof, shall disclose any such information except in published statistical material that does not disclose the affairs of any individual or corporation.

(b)(2) Notwithstanding any other provision of this Regulation, any Confidential Report of Operations (Form F.R. 2068) of a foreign banking organization may, upon written request to and approval by the Director of the Division of Banking Supervision and Regulation (or his delegee), and with the concurrence of the General Counsel (or his delegee), be made available for inspection to another bank supervisory authority having general supervision of any United States branch, agency, subsidiary bank or commercial lending company of the foreign banking organization, only for use where necessary in the performance of the official duties of such authority. These reports shall be made available for inspection by authorized persons only on Federal Reserve premises under the same procedures as apply to personnel of the Federal Reserve System. All reports made available under this paragraph shall remain the property of the Board; and no person, agency, or authority who obtains access to any such report, or any officer, director, or employee thereof, shall publish, publicize, or otherwise disclose any information contained in the report to any person.

(c) *Prohibition against disclosure.* Except as provided in this part, no officer, employee, or agent of the Board or of any Federal Reserve Bank shall disclose or permit the disclosure of any unpublished information of the Board to anyone (other than an officer, employee, or agent of the Board or of a Federal Reserve Bank properly entitled to such information for the performance of his official duties), whether by giving out or furnishing such information or a copy thereof or by allowing any person to inspect or copy such information or copy thereof, or otherwise. Notwithstanding the foregoing, unpublished economic, statistical, or similar information or unpublished information regarding interpretations by the Board of statutory or regulatory provisions may be disclosed, orally or in writing, by any officer, employee, or agent of the Board or of any Federal Reserve Bank who has knowledge of the subject matter to any person who, in the judgment of such officer, employee, or agent, has a proper interest therein, subject, however, to the restrictions stated in § 261.5 and this § 261.6.

(d) *Foreign banking organization confidential report of operations.* It is the Board's policy that the confidentiality of a foreign banking organization's Confidential Report of Operations (Form F.R. 2068) should be maintained at all times. Except as provided in paragraph (b)(2) of this section, information submitted to the Board as part of any Confidential Report of Operations is not available for public inspection by any person other than an officer, employee, or agent of the Board or of a Federal Reserve Bank properly entitled to such information in the performance of such person's official duties. Any employee that violates this section by releasing such a Report to any unauthorized person may be subject to disciplinary action under 12 CFR 264.735-5 (Rules of Employee Responsibilities and Conduct).

[32 FR 9516, July 1, 1967, as amended at 35 FR 16973, Nov. 4, 1970; 40 FR 7621, Feb. 21, 1975; 42 FR 9386, Feb. 16, 1977; 42 FR 10681, Feb. 23, 1977; 47 FR 51096, Nov. 12, 1982]

§ 261.7 Subpoenas.

(a) *Advice by person served.* If any person, whether or not an officer, employee, or agent of the Board or of a Federal Reserve Bank, has information of the Board that may not be disclosed under this part and in connection therewith is served with a subpoena, order, or other process requiring his personal attendance as a witness or the production of documents or information in any proceeding, he should promptly inform the Secretary of the Board of such service and of all relevant facts, including the documents and information requested and any facts which may be of assistance to the Board in determining whether such documents or information should be made available; and he should take action at the appropriate time to inform the court or tribunal that issued the process and the attorney for the party at whose instance the process was issued, if known, of the substance of these rules.

(b) *Appearance by person served.* Unless the Board has authorized disclosure of the relevant information, or except as provided in 18 U.S.C. 1906, any person having information of the Board that may not be disclosed under this part who is required to respond to a subpoena or other legal process shall attend at the time and place therein mentioned and decline to disclose such information or gives any testimony with respect thereto, basing his refusal upon this part. If the court or other body orders the disclosure of such information or the giving of such testimony, the person having such information of the Board shall continue to decline to disclose such information and shall promptly report the facts to the Board for such action as the Board may deem appropriate.

PART 261a—RULES REGARDING ACCESS TO AND REVIEW OF PERSONAL INFORMATION IN SYSTEMS OF RECORDS

Sec.
261a.1 Purpose and scope.
261a.2 Definitions.
261a.3 Procedures for requests pertaining to individual records in a record system.
261a.4 Requirements for identification of individuals making requests.
261a.5 Disclosure of requested information to individuals.
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261a.10 Disclosure of record to person other than individual to whom it pertains.
261a.11 Fees.
261a.12 Penalties.
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AUTHORITY: 5 U.S.C. 552a; 5 U.S.C. 553; 5 U.S.C. 552.

SOURCE: 40 FR 45617, Oct. 2, 1975, unless otherwise noted.

§ 261a.1 Purpose and scope.

The purpose of this part is to establish regulations implementing the provisions of the Privacy Act, 5 U.S.C. 552a, with regard to access to and review of personal information in systems of records maintained by the Board of Governors of the Federal Reserve System ("Board").

§ 261a.2 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) The term "individual" means a natural person who is either a citizen of the United States or an alien lawfully admitted for permanent residence. The term "individual" includes the parent of any minor or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(b) The term "maintain" also includes maintain, collect, use, disseminate, or control.

(c) The term "record" means any item, collection or grouping of information about an individual maintained by the Board that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual.

(d) The term "system of records" means a group of any records under the control of the Board from which information is retrieved by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.

(e) The term "designated system of records" means a system of records that has been listed in the FEDERAL REGISTER pursuant to the requirements of 5 U.S.C. 552a(e).

(f) The term "routine use" means, with respect to disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(g) The term "business days" means all days except Saturdays, Sundays, and legal public holidays.

§ 261a.3 Procedures for requests pertaining to individual records in a record system.

(a) Requests for notification of the existence of or for access to personal information in a designated system of records may be made by the person to whom such information pertains. Every such request shall be made in writing and shall specify that it is made pursuant to the Privacy Act. Each request should identify the designated system of records in which the requested record is to be found, should reasonably describe the information requested and, except as provided in § 261a.4, should include a notarized statement attesting to the identity of the requestor.

(b) Requests made pursuant to paragraph (a) of this section shall be addressed to the Director of the Division of Personnel, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, in the case of records relating to employment with the Board. Requests for other records should be addressed to the Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Requests for information pursuant to paragraph (a) of this section may also be made in person during regular business hours at the offices of the Board of Governors of the Federal Reserve System, Federal Reserve Building, 20th and Constitution Avenue, NW., Washington, D.C. 20551.

(c) An individual making a request pursuant to paragraph (a) of this section may also include in such request a request for the accounting required by section (c) of the Privacy Act, 5 U.S.C. 552a, of previous disclosures of records pertaining to such individual in a designated system of records.

(d) Every request made pursuant to this section will be acknowledged or, where practicable, substantially responded to within 10 business days from receipt.

§ 261a.4 Requirements for identification of individuals making requests.

(a) Each request for information made pursuant to § 261a.3 shall include a notarized statement attesting to the identity of the requestor except in the following instances:

(1) Where the information requested is otherwise publicly available under the Freedom of Information Act, 5 U.S.C. 552, and the Board's Rules Regarding Availability of Information (12 CFR Part 261).

(2) Where the requestor makes written request for information in person and presents a driver's license, birth certificate, employment identification card or other means of identification, sufficient to establish his identity.

(3) Where the request is only for notification of the existence of records in a designated system of records pertaining to the requestor.

§ 261a.5 Disclosure of requested information to individuals.

(a) Information requested pursuant to § 261a.3, except for that compiled in reasonable anticipation of a civil action or proceeding or otherwise exempted from disclosure as provided in § 261a.13, will be made available for inspection and copying during regular business hours at the Board's offices. However, where the requested information can be disclosed only by providing a copy of the record, because such record cannot reasonably be put into a form for individual inspection (e.g., computer tapes), or where the requestor may request that copies of requested information be forwarded, such information will be mailed to the requestor. Access to or copies of requested information will be promptly provided after the acknowledgment as provided in § 261a.3(c), unless good cause for delay is communicated to the requestor.

(b) Fees for copying such records will be assessed in accordance with § 261a.11.

(c) The requestor of information may be accompanied in the inspection and discussion of that information by a person of the requestor's own choosing upon the submission by the requestor of a written and signed statement authorizing the presence of such person.

§ 261a.6 Special procedures—medical records.

Medical records requested pursuant to § 261a.3 will be disclosed to the requestor unless the disclosure of such records directly to the requestor could, in the judgment of the official deemed responsible for such records, have an adverse effect upon the requestor. In such instance, such information will be transmitted to a licensed physician named by the requestor.

§ 261a.7 Request for correction or amendment to record.

(a) Where an individual believes that any portion of a record in a designated system of records used in making a determination about such individual is not accurate, relevant, timely or complete, that individual may request that such record be amended or corrected. Such request should be submitted in writing to the appropriate officer as designated in § 261a.3. Each request for amendment or correction of a record should identify the system of records containing the record for which amendment or correction is requested, specify the portion of that record requested to be amended or corrected, and describe the nature of and reasons for each requested amendment or correction. Additionally, each request must include a notarized statement attesting to the identity of the requestor except where the request is presented in person and the requestor's identity may thereupon be verified.

(b) Nothing in paragraph (a) of this section shall permit collateral attack upon that which has been decided in a previous judicial, quasi-judicial or other proceeding.

§ 261a.8 Agency review of request for amendment of record.

(a) As appropriate, the Secretary of the Board or the Director of the Division of Personnel shall acknowledge each request made pursuant to § 261a.7 within 10 business days of its receipt. Such acknowledgment may request additional information necessary for a determination of the request for amendment or correction.

(b) As appropriate, the Secretary of the Board or the Director of the Division of Personnel shall promptly review each request made pursuant to § 261a.7 in light of the criteria of accuracy, relevance, timeliness, completeness and necessity set forth in subsections (e)(1) and (e)(5) of the Privacy Act, 5 U.S.C. 552a.

(c) Upon completion of review of each request made pursuant to § 261a.7, the Secretary of the Board or the Director of the Division of Personnel shall immediately inform the requestor of the determination to grant or deny the requested amendment or correction.

(d) Where any request pursuant to § 261a.7 has been denied in whole or part, the requestor shall be advised of the reasons therefor, the procedure for appeal of the determination and the name, title and address of the official to whom such appeal should be directed.

§ 261a.9 Appeal of initial adverse determination on correction or amendment.

(a) A denial of a request made pursuant to § 261a.7 may be appealed to the Board of Governors or any official designated by the Chairman of the Board of Governors within 30 business days of issuance of notification of denial. Every such appeal should be made in writing to the official designated in the letter of initial denial, should specify the previous background of the request and should provide reasons why the initial determination should be reversed.

(b) The Board of Governors or such official designated by the Chairman of the Board shall make a determination with respect to the review of such appeal not later than 30 business days from its receipt, unless the reviewing official extends such period for good cause shown.

(c) If the Board or designated official affirms the initial denial of a request to amend or correct made pursuant to § 261a.7, such determination shall be communicated to the requestor together with a statement of the reasons therefore and the requestor shall be informed of the right of judicial review of the determination. The requestor may then file a concise statement setting forth disagreement with the affirmation of denial within 30 days of notification of such determination and such statement shall be provided to persons or other agencies to whom the disputed record is disclosed.

§ 261a.10 Disclosure of record to person other than individual to whom it pertains.

(a) No record contained in a designated system of records shall be disclosed to any person or agency without the prior written consent of the individual to whom the record pertains unless the disclosure is authorized by paragraph (b) of this section.

(b) The restrictions on disclosure in paragraph (a) of this section do not apply to any disclosure (1) to those officers and employees of the Board who have a need for the record in the performance of their duties; (2) that is required under the Freedom of Information Act (5 U.S.C. 552); (3) for a routine use listed with respect to a designated system of records; (4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code; (5) to a recipient who has provided the Board with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable; (6) to the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value; (7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board specifying the particular portion desired and the law enforcement activity for which the record is sought; (8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual; (9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee; (10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or (11) pursuant to the order of a court of competent jurisdiction.

§ 261a.11 Fees.

(a) Copies of records requested pursuant to § 261a.3 will be provided at a cost of $.10 per page for photocopying or at a cost not to exceed the direct cost of printing, typing or otherwise preparing such copies.

(b) Documents may be furnished without charge where total charges are less than $2.

§ 261a.12 Penalties.

The Privacy Act, 5 U.S.C. 552a(1)(3), provides:

> Any person who knowingly and willfully requests or obtains any record concerning

an individual from an agency under false pretense shall be guilty of a misdemeanor and fined not more than $5,000.00.

§ 261a.13 Exemptions.

(a) Pursuant to subsection (k) of the Privacy Act, 5 U.S.C. 552a, the Board may exempt certain portions of records within designated systems of records from the requirements of the Privacy Act, (including access to and review of such records pursuant to this part) if such portions are:

(1) Subject to the provisions of section 552(b)(1) of the Freedom of Information Act, 5 U.S.C. 552:

(2) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act, 5 U.S.C. 552a: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Privacy Act, 5 U.S.C. 552a, under an implied promise that the identity of the source would be held in confidence:

(3) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18 of the United States Code;

(4) Required by statute to be maintained and used solely as statistical records;

(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosures of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Privacy Act, 5 U.S.C. 552a, under an implied promise that the identity of the source would be held in confidence;

(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Privacy Act, 5 U.S.C. 552a, under an implied promise that the identity of the source would be held in confidence.

(b) Those designated systems of records which are exempt from the requirements of this part or any other requirements of the Privacy Act, 5 U.S.C. 552a, will be indicated in the notice of designated systems of records published by the Board.

(c) Nothing in this part shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

PART 261b—RULES REGARDING PUBLIC OBSERVATION OF MEETINGS

Sec.
261b.1 Basis and scope.
261b.2 Definitions.
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261b.4 Meetings open to public observation.
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261b.10 Certification of General Counsel.
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Sec.
261b.13 Fees.

AUTHORITY: 5 U.S.C. 552b.

SOURCE: 42 FR 13297, Mar. 10, 1977, unless otherwise noted.

§ 261b.1 Basis and scope.

This part is issued by the Board of Governors of the Federal Reserve System ("the Board") under section 552b of Title 5 of the United States Code, the Government in the Sunshine Act ("the Act"), to carry out the policy of the Act that the public is entitled to the fullest practicable information regarding the decision making processes of the Board while at the same time preserving the rights of individuals and the ability of the Board to carry out its responsibilities. These regulations fulfill the requirement of subsection (g) of the Act that each agency subject to the provisions of the Act shall promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of the Act.

§ 261b.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) The term "agency" means the Board and subdivisions thereof.

(b) The term "subdivision" means any group composed of two or more Board members that is authorized to act on behalf of the Board.

(c) The term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official Board business, but does not include (1) deliberations required or permitted by subsections (d) or (e) of the Act, or (2) the conduct or disposition of official agency business by circulating written material to individual members.

(d) The term "number of individual agency members required to take action on behalf of the agency" means in the case of the Board, a majority of its members except that (1) Board determination of the ratio of reserves against deposits under section 19(b) of the Federal Reserve Act requires the vote of four members, (2) Board action with respect to advances, discounts and rediscounts under sections 10(a), 11(b), and 13(3) of the Federal Reserve Act requires the vote of five members and (3) Board action with respect to the percentage of individual member bank capital and surplus which may be represented by loans secured by stock and bond collateral under section 11(m) of the Federal Reserve Act requires the vote of six members. In the case of subdivisions of the Board, the term means the number of members constituting a quorum of the designated subdivision.

(e) The term "member" means a member of the Board appointed under section 10 of the Federal Reserve Act. In the case of certain Board proceedings pursuant to 12 U.S.C. 1818(e), the Comptroller of the Currency is entitled to sit as a member of the Board and for these proceedings he shall be deemed a "member" for the purposes of this part. In the case of any subdivision of the Board, the term "member" means a member of the Board designated to serve on that subdivision.

(f) The term "public observation" means that the public shall have the right to listen and observe but not to record any of the meetings by means of cameras or electronic or other recording devices unless approval in advance is obtained from the Public Affairs Office of the Board and shall not have the right to participate in the meeting, unless participation is provided for in the Board's Rules of Procedure.

(g) The term "Federal agency" means an "agency" as defined in 5 U.S.C. 551(1).

(h) "Committee" means the Action Committee established pursuant to 12 CFR 265.1a(c).

[42 FR 13297, Mar. 10, 1977, as amended at 43 FR 34481, Aug. 4, 1978]

§ 261b.3 Conduct of agency business.

Members shall not jointly conduct or dispose of official agency business other than in accordance with this part.

§ 261b.4 Meetings open to public observation.

(a) Except as provided in § 261b.5, every portion of every meeting of the agency shall be open to public observation.

(b) Copies of staff documents considered in connection with agency discussion of agenda items for a meeting that is open to public observation shall be made available for distribution to members of the public attending the meeting, in accordance with the provisions of 12 CFR Part 261.

(c) The agency will maintain a complete electronic recording adequate to record fully the proceedings of each meeting or portion of a meeting open to public observation. Cassettes will be available for listening in the Freedom of Information Office, and copies may be ordered for $5 per cassette by telephoning or by writing Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

(d) The agency will maintain mailing lists of names and addresses of all persons who wish to receive copies of agency announcements of meetings open to public observation. Requests for announcements may be made by telephoning or by writing Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

[44 FR 11750, Mar. 2, 1979]

§ 261b.5 Exemptions.

(a) Except in a case where the agency finds that the public interest requires otherwise, the agency may close a meeting or a portion or portions of a meeting under the procedures specified in § 261b.7 or § 261b.8 of this part, and withhold information under the provisions of §§ 261b.6, 261b.7, 261b.8, or 261b.11 of this part, where the agency properly determines that such meeting or portion or portions of its meeting or the disclosure of such information is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to internal personnel rules and practices;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of Title 5 of the United States Code), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by a Federal agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Board or other Federal agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would—

(i) Be likely to (A) lead to significant speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

(ii) Be likely to significantly frustrate implementation of a proposed action, except that paragraph (a)(9)(ii) of this section shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena, participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition of a particular case of formal agency adjudication pursuant to the procedures in section 554 of Title 5 of the United States Code or otherwise involving a determination on the record after opportunity for a hearing.

§ 261b.6 Public announcement of meetings.

(a) Except as otherwise provided by the Act, public announcement of meetings open to public observation and meetings to be partially or completely closed to public observation pursuant to § 261b.8 of this part will be made at least one week in advance of the meeting. Except to the extent such information is determined to be exempt from disclosure under § 261b.5 of this part, each such public announcement will state the time, place and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated to respond to requests for information about the meeting.

(b) If a majority of the members of the agency determines by a recorded vote that agency business requires that a meeting covered by paragraph (a) of this section be called at a date earlier than that specified in paragraph (a) of this section, the agency will make a public announcement of the information specified in paragraph (a) of this section at the earliest practicable time.

(c) Changes in the subject matter of a publicly announced meeting, or in the determination to open or close a publicly announced meeting or any portion of a publicly announced meeting to public observation, or in the time or place of a publicly announced meeting made in accordance with the procedures specified in § 261b.9 of this part will be publicly announced at the earliest practicable time.

(d) Public announcements required by this section will be posted at the Board's Public Affairs Office and Freedom of Information Office and may be made available by other means or at other locations as may be desirable.

(e) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding announcements and the name and telephone number of the official designated by the Board to respond to requests about the meeting, shall also be submitted for publication in the FEDERAL REGISTER.

§ 261b.7 Meetings closed to public observation under expedited procedures.

(a) Since the Board and the Committee qualifies for the use of expedited procedures under subsection (d)(4) of the Act, meetings or portions thereof exempt under paragraph (a)(4), (a)(8), (a)(9)(i) or (a)(10) of § 261b.5 of this part, will be closed to public observation under the expedited procedures of this section. Following are examples of types of items that, absent compelling contrary circumstances, will qualify for these exemptions: Matters relating to a specific bank or bank holding company, such as bank branches or mergers, bank holding company formations, or acquisition of an additional bank or acquisition or de novo undertaking of a permissible nonbanking activity; bank regulatory matters, such as applications for membership, issuance of capital notes and investment in bank premises; foreign banking matters; bank supervisory and enforcement matters, such as cease-and-desist and officer removal proceedings; monetary policy matters, such as discount rates, use of the discount window, changes in the limitations on payment of interest on time and savings accounts, and changes in reserve requirements or margin regulations.

(b) At the beginning of each meeting, a portion or portions of which is closed to public observation under expedited procedures pursuant to this section, a recorded vote of the members present will be taken to determine whether a majority of the members of the agency votes to close such meeting of portions of such meeting to public observation.

(c) A copy of the vote, reflecting the vote of each member, and except to the extent such information is determined to be exempt from disclosure under § 261b.5, a public announcement of the time, place and subject matter of the meeting or each closed portion thereof, will be made available at the earliest practicable time at the Board's Public Affairs Office and Freedom of Information Office.

[42 FR 13297, Mar. 10, 1977, as amended at 43 FR 34481, Aug. 4, 1978]

§ 261b.8 Meetings closed to public observation under regular procedures.

(a) A meeting or a portion of a meeting will be closed to public observation under regular procedures, or information as to such meeting or portion of a meeting will be withheld only by recorded vote of a majority of the members of the agency when it is determined that the meeting or the portion of the meeting or the withholding of information qualifies for exemption under § 261b.5. Votes by proxy are not allowed.

(b) Except as provided in subsection (c) of this section, a separate vote of the members of the agency will be taken with respect to the closing or the withholding of information as to each meeting or portion thereof which is proposed to be closed to public observation or with respect to which information is proposed to be withheld pursuant to this section.

(c) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation or with respect to any information concerning such series of meetings proposed to be withheld, so long as each meeting or portion thereof in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(d) Whenever any person's interests may be directly affected by a portion of a meeting for any of the reasons referred to in exemption (a)(5), (a)(6) or (a)(7) of § 261b.5 of this part, such person may request in writing to the Secretary of the Board that such portion of the meeting be closed to public observation. The Secretary, or in his or her absence, the Acting Secretary of the Board, will transmit the request to the members and upon the request of any one of them a recorded vote will be taken whether to close such meeting to public observation.

(e) Within one day of any vote taken pursuant to paragraphs (a) through (d) of this section, the agency will make publicly available at the Board's Public Affairs Office and Freedom of Information Office a written copy of such vote reflecting the vote of each member on the question. If a meeting or a portion of a meeting is to be closed to public observation, the agency, within one day of the vote taken pursuant to paragraphs (a) through (d) of this section, will make publicly available at the Board's Public Affairs Office and Freedom of Information Office a full, written explanation of its action closing the meeting or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation, except to the extent such information is determined by the agency to be exempt from disclosure under subsection (c) of the Act and § 261b.5 of this part.

(f) Any person may request in writing to the Secretary of the Board that an announced closed meeting, or portion of the meeting, be held open to public observation. The Secretary, or in his or her absence, the Acting Secretary of the Board, will transmit the request to the members of the Board and upon the request of any member a recorded vote will be taken whether to open such meeting to public observation.

[42 FR 13297, Mar. 10, 1977, as amended at 44 FR 11750, Mar. 2, 1979]

§ 261b.9 Changes with respect to publicly announced meeting.

The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to public observation may be changed following public announcement under § 261b.6 only if a majority of the members of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible. Public announcement of such change and the vote of each member upon such change will be made pursuant to § 261b.6(c). Changes in time, including postponements and cancellations of a publicly announced meeting or portion of a meeting or changes in the place of a publicly announced meeting will be publicly announced pursuant to § 261b.6(c) by the Secretary of the Board or, in the Secretary's absence, the Acting Secretary of the Board.

§ 261b.10 Certification of General Counsel.

Before every meeting or portion of a meeting closed to public observation under § 261b.7 or 261b.8 of this part, the General Counsel, or in the General Counsel's absence, the Acting General Counsel, shall publicly certify whether or not in his or her opinion the meeting may be closed to public observation and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, will be retained for the time prescribed in § 261b.11(d).

§ 261b.11 Transcripts, recordings, and minutes.

(a) The agency will maintain a complete transcript or electronic recording or transcription thereof adequate to record fully the proceedings of each meeting or portion of a meeting closed to public observation pursuant to exemption (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7) or (a)(9)(ii) of § 261b.5 of this part. Transcriptions of recordings will disclose the identity of each speaker.

(b) The agency will maintain either such a transcript, recording or transcription thereof, or a set of minutes that will fully and clearly describe all matters discussed and provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question), for meetings or portions of meetings closed to public observation pursuant to exemptions (a)(8), (a)(9)(A) or (a)(10) of § 261b.5 of this part. The minutes will identify all documents considered in connection with any action taken.

(c) Transcripts, recordings or transcriptions thereof, or minutes will promptly be made available to the public in the Freedom of Information Office except for such item or items of such discussion or testimony as may be determined to contain information that may be withheld under subsection (c) of the Act and § 261b.5 of this part.

(d) A complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording or verbatim copy of a transcription thereof of each meeting or portion of a meeting closed to public observation will be maintained for a period of at least two years or one year after the conclusion of any agency proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

§ 261b.12 Procedures for inspection and obtaining copies of transcriptions and minutes.

(a) Any person may inspect or copy a transcript, a recording or transcription of a recording, or minutes described in § 261b.11(c) of this part.

(b) Requests for copies of transcripts, recordings or transcriptions of recordings, or minutes described in § 261b.11(c) of this part shall specify the meeting or the portion of meeting desired and shall be submitted in writing to the Secretary of the Board,

Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Copies of documents identified in minutes may be made available to the public upon request under the provisions of 12 CFR Part 261 (Rules Regarding Availability of Information).

§ 261b.13 Fees.

(a) Copies of transcripts, recordings or transcriptions of recordings, or minutes requested pursuant to section § 261b.12(b) of this part will be provided at the cost of 10¢ per standard page for photocopying or at a cost not to exceed the actual cost of printing, typing, or otherwise preparing such copies.

(b) Documents may be furnished without charge where total charges are less than $2.

PART 262—RULES OF PROCEDURE

Sec.
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AUTHORITY: 5 U.S.C. 552.

SOURCE: 38 FR 6807, Mar. 13, 1973, unless otherwise noted.

§ 262.1 Basis and scope.

This part is issued pursuant to section 552 of Title 5 of the United States Code, which requires that every agency shall publish in the FEDERAL REGISTER statements of the general course and method by which its functions are channeled and determined, rules of procedure, and descriptions of forms available or the places at which forms may be obtained.

§ 262.2 Procedure for regulations.

(a) *Notice.* Notices of proposed regulations of the Board of Governors of the Federal Reserve System (the "Board") or amendments thereto are published in the FEDERAL REGISTER, except as specified in paragraph (e) of this section or otherwise excepted by law. Such notices include a statement of the terms of the proposed regulations or amendments and a description of the subjects and issues involved; but the giving of such notices does not necessarily indicate the Board's final approval of any feature of any such proposal. The notices also include a reference to the authority for the proposed regulations or amendments and a statement of the time, place, and nature of public participation.

(b) *Public participation.* The usual method of public submission of data, views, or arguments is in writing. It is ordinarily preferable that they be sent to the Secretary of the Board, Washington, D.C. 20551, with copies to the appropriate Federal Reserve Bank. The locations of the 12 Federal Reserve Banks and the boundaries of the Federal Reserve districts are shown in the appendix to the Board's rules of organization. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of this chapter regarding availability of information.

(c) *Preparation of draft and action by Board.* In the light of consideration of all relevant matter presented or ascertained, the appropriate division of the Board's staff, in collaboration with other divisions, prepares drafts of proposed regulations or amendments, and the staff submits them to the Board. The Board takes such action as it deems appropriate in the public interest. Any other documents that may be necessary to carry out any decision by the Board in the matter are usually prepared by the Legal Division, in collaboration with the other divisions of the staff.

(d) *Effective dates.* Any substantive regulation or amendment thereto issued by the Board is published not less than 30 days prior to the effective date thereof, except as specified in paragraph (e) of this section or as otherwise excepted by law.

(e) *Exceptions as to notice or effective date.* In certain situations, notice and public participation with respect to proposed regulations may be impracticable, unnecessary, contrary to the public interest, or otherwise not required in the public interest, or there may be reason and good cause in the public interest why the effective date should not be deferred for 30 days. The reason or reasons in such cases usually are that such notice, public participation, or deferment of effective date would prevent the action from becoming effective as promptly as necessary in the public interest, would permit speculators or others to reap unfair profits or to interfere with the Board's actions taken with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country, would provoke other consequences contrary to the public interest, would unreasonably interfere with the Board's necessary functions with respect to management or personnel, would not aid the persons affected, or would otherwise serve no useful purpose. The following may be mentioned as some examples of situations in which advance notice or deferred effective date, or both, will ordinarily be omitted in the public interest: The review and determination of discount rates established by Federal Reserve Banks, and changes in general requirements regarding reserves of member banks, maximum interest rates on time and savings deposits, or credit for purchasing or carrying securities.

§ 262.3 Applications.

(a) *Forms.* Any application, request, or petition (hereafter referred to as "application") for the approval, authority, determination, or permission of the Board with respect to any action for which such approval, authority, determination, or permission is required by law or regulation of the Board (including actions authorized to be taken by a Federal Reserve Bank or others on behalf of the Board pursuant to authority delegated under Part 265 of this chapter) shall be submitted in accordance with the pertinent form, if any, prescribed by the Board. Copies of any such form and details regarding information to be included therein may be obtained from any Federal Reserve Bank. Any application for which no form is prescribed should be signed by the person making the application or by his duly authorized agent, should state the facts involved, the action requested, and the applicant's interest in the matter, and should indicate the reasons why the application should be granted. Applications for access to, or copying of, records of the Board should be submitted as provided in § 261.4(d) of this chapter.

(b) *Notice of applications.* (1) In the case of applications,

(i) For membership in the Federal Reserve System where such membership would confer Federal deposit insurance on a bank,

(ii) By a State member bank for the establishment of a domestic branch or other facility that would be authorized to receive deposits,

(iii) By a State member bank for the relocation of a domestic branch office,

(iv) For merger, consolidation, or acquisition of assets or assumption of liabilities, if the acquiring, assuming, or resulting bank is to be a State member bank,

(v) To become a bank holding company, and

(vi) By a bank holding company to acquire ownership or control of shares or assets of a bank, or to merge or consolidate with any other bank holding company,

the applicant shall cause to be published on the same day of each of two consecutive weeks a notice in the form prescribed by the Board. The notice shall be placed in the classified advertising legal notices section of the newspaper, and the first notice may appear no more than ninety calendar days prior to acceptance by the Reserve Bank of the application. The notice must provide an opportunity for the public to give written comment on the application to the appropriate Federal Reserve Bank for at least thirty days after the date of publication of the first notice. In addition, between publication of the first and second notice, the applicant shall submit to the appropriate Reserve Bank for acceptance copies of the application, together with a copy of the notice as it appeared in the newspaper. Such notice shall be published in a newspaper of general circulation in (A) the community in which the head office of the bank is or is to be located in the case of an application for membership that would confer deposit insurance, (B) the community or communities in which the head office of the bank and the proposed branch or other facility (other than an electronic funds transfer facility) are located in the case of an application for the establishment of a domestic branch or other facility that would be authorized to receive deposits, (C) the community or communities in which the head office of the bank, the office to be closed, and the office to be opened are located in the case of an application for the relocation of a domestic branch office, (D) the community or communities in which the head office of each of the banks to be party to the merger, consolidation, or acquisition of assets or assumption of liabilities are located in the case of an application by a bank for merger, consolidation, or acquisition of assets or assumption of liabilities, or (E) the community or communities in which the head offices of the largest subsidiary bank, if any, or an applicant and of each bank, shares of which are to be directly or indirectly acquired, are located in the case of applications under section 3 of the Bank Holding Company Act.

(2) In addition to the foregoing notice, an applicant, in the case of an applicaition to relocate a domestic branch office or other facility that would be authorized to receive deposits, shall post in a conspicuous public place in the lobby of the office to be closed a notice containing the information specified in § 262.3(b)(1). Such notice should be posted on the date of the first notice required by § 262.3(b)(1).

(c) *Filing of applications.* Any application should be sent to the Federal Reserve Bank of the district in which the head office of the parent banking organization is located, except as otherwise specified on application forms, and that Bank will forward it to the Board when appropriate; however, in the case of a foreign bank holding company, as defined in § 225.4(g) of this chapter, applications shall be sent to the Federal Reserve Bank of the district in which the operations of the organization's subsidiary banks are principally conducted. In the case of a foreign banking organization that is not a bank holding company but that has one or more branches, agencies, or commercial lending companies in any State of the United States or the District of Columbia, applications shall be sent to the Federal Reserve Bank of the district in which the organization's banking assets are the largest. Applications of a member bank subsidiary, however, should be filed with the Reserve Bank of the district in which the member bank is located.

(d) *Analysis by staff.* In every case, the Reserve Bank makes such investigation as may be necessary, and, except when acting pursuant to delegated authority, reports the relevant facts, with its recommendation, to the Board. In the light of consideration of all relevant matter presented or ascertained, the Board's staff prepares and submits to the Board comments on the subject.

(e) *Submission of comments and requests for hearing.* The Board is only required to consider a comment or a request for a hearing with respect to an application or notice if it is in writing and received by the Secretary of the Board or the appropriate Federal Reserve Bank on or before the latest date prescribed in any notice with respect to the application or notice, or where no such date is prescribed, on or before the 30th day after the date notice is first published. Similarly, the Board will consider comments on an application from the Attorney General or a banking supervisory authority to which notification of receipt of an application has been given, only if such comment is received by the Secretary of the Board within 30 days of the date of the letter giving such notification. Any comment on an application or notice that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing. In every case where a timely comment or request for hearing is received as provided herein, a copy of such comment or request shall be forwarded promptly to the applicant for its response. The Board will consider the applicant's response only if it is in writing and sent to the Secretary of the Board on or before eight business days after the date of the letter by which it is forwarded to the applicant. At the same time it transmits its response to the Board, the applicant should transmit a copy of its response to the person or supervisory authority making such comment or requesting a hearing. Notwithstanding the foregoing, the Board may, in its sole discretion and without notifying the parties, take into consideration the substance of comments with respect to an application, (but not requests for hearing) that are not received within the time periods provided herein.

(f) *Action on applications.* The Board takes such action as it deems appropriate in the public interest. Such documents as may be necessary to carry out any decision by the Board are prepared by the Board's staff. With respect to actions taken by a Federal Reserve Bank on behalf of the Board under delegated authority, statements and necessary documents are prepared by the staff of such Federal Reserve Bank.

(g) *Notice of action.* Prompt notice is given to the applicant of the granting or denial in whole or in part of any application. In the case of a denial, except in affirming a prior denial or where the denial is self-explanatory, such notice is accompanied by a simple statement of the grounds for such action.

(h) *Action at Board's initiative.* When the Board, without receiving an application, takes action with respect to any matter as to which opportunity for hearing is not required by statute or Board regulation, similar procedure is followed, including investigations, reports, and recommendations by the Board's staff and by the Reserve Banks, where appropriate.

(i) *General procedures for bank holding company and merger applications.* In addition to procedures applicable under other provisions of this part, the following procedures are applicable in connection with the Board's consideration of applications under sections 3 and 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842 and 1843), hereafter referred to as "section 3 applications" or "section 4 applications," and of applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823), hereafter called "merger applications." Except as otherwise indicated, the following procedures apply to all such applications.

(1) The Board issues each week a list that identifies section 3 and section 4 and merger applications received and acted upon during the preceding week by the Board or the Reserve Banks pursuant to delegated authority. Notice of receipt of all section 3 applications and of section 4(c)(8) applications acted on by the Board is published in the FEDERAL REGISTER.

(2) If a hearing is required by law or if the Board determines that a formal hearing for the purpose of taking evidence is desirable, the Board issues an order for such a hearing, and a notice thereof is published in the FEDERAL REGISTER. Any such formal hearing is conducted by an administrative law judge in accordance with the Board's rules of practice for formal hearings (Part 263 of this chapter) except that, unless otherwise ordered by the Board, such a hearing is public.

(3) In any case in which a formal hearing is not ordered by the Board, the Board may afford the applicant and other properly interested persons (including Governmental agencies) an opportunity to present views orally before the Board or its designated representative. Unless otherwise ordered by the Board, any such oral presentation is public and notice of such public proceeding is published in the FEDERAL REGISTER.

(4) Each action taken by the Board on an application is embodied in an order that indicates the votes of members of the Board. The order either contains reasons for the Board's action (i.e., an expanded order) or is accompanied by a statement of the reasons for the Board's action. Both the order and any accompanying statement are released to the press. Each order accompanied by a statement and any order of general interest, together with a list of other orders, are published in the Federal Reserve Bulletin. Action by a Reserve Bank under delegated authority as provided for under Part 265 of this

chapter is reflected in a letter of notification to the applicant.

(5) Unless the Board shall otherwise direct, each section 3 and section 4 and merger application is made available for inspection by the public except for portions thereof as to which the Board determines that nondisclosure is warranted under section 552(b) of Title 5 of the United States Code.

(j) *Special procedures for certain applications.* The following types of applications require procedures exclusive of, or in addition to, those described in paragraphs (g) (1) through (6) of this section.

(1) Special rules pertaining to section 3 and merger applications follow:

(i) Each order of the Board and each letter of notification by a Reserve Bank acting pursuant to delegated authority approving a section 3 application includes, pursuant to the Act approved July 1, 1966 (12 U.S.C. 1849(b)), a requirement that the transaction approved shall not be consummated before the 30th calendar day following the date of such order.

(ii) Each order of the Board approving a merger application includes, pursuant to the Act approved February 21, 1966 (12 U.S.C. 1828(c)(1)(6)), a requirement that the transaction approved shall not be consummated before the 30th calendar day following the date of such order, except as the Board may otherwise determine pursuant to emergency situations as to which the Act permits consummation at earlier dates.

(iii) Each order or each letter of notification approving an application also includes, as a condition of approval, a requirement that the transaction approved shall be consummated within 3 months and, in the case of acquisition by a holding company of stock of a newly organized bank, a requirement that such bank shall be opened for business within 6 months, but such periods may be extended for good cause by the Board (or by the appropriate Federal Reserve Bank where authority to grant such extensions is delegated to the Reserve Bank).

(2) For special rules governing procedures for section 4(c)(8) applications, refer to § 225.5(a)(c) of this chapter.

(3) For special rules governing procedures for section 4(c)(9) applications, refer to § 225.4(g) of this chapter.

(4) For special rules governing procedures for section 4(c)(12) applications, refer to § 225.4(d) of this chapter.

(5) For special rules governing procedures for section 4(c)(13) applications, refer to § 225.4(f) of this chapter.

(k) *Reconsideration of certain Board actions.* The Board may reconsider any action taken by it on an application upon receipt by the Secretary of the Board of a written request for reconsideration from any party to such application, on or before the 15th day after the effective date of the Board's action. Such request should specify the reasons why the Board should reconsider its action, and present relevant facts that for good cause shown, were not previously presented to the Board. Within 10 days of receipt of such a request, the General Counsel, acting pursuant to delegated authority (12 CFR 265.2(b)(7)), shall determine whether or not the request for reconsideration should be granted, and shall notify all parties to the application orally by telephone of this determination within 10 days. Such notification will be confirmed promptly in writing. In the exercise of this authority, the General Counsel shall confer with the Directors of other interested Divisions of the Board or their designees. Notwithstanding the foregoing, the Board may, on its own motion if it deems reconsideration appropriate, elect to reconsider its action with respect to any application, and the parties to such application shall be notified by the Secretary of the Board of its election as provided above. If it is determined that the Board should reconsider its action with respect to an application, such action will be stayed and will not be final until the Board has acted on the application upon reconsideration. If appropriate, notice of reconsideration of an application will be published promptly in the FEDERAL REGISTER.

(12 U.S.C. 1842(a), 1843(c), 1844(b), 1828(c), 321 and 248(i))

(l) *Waiver.* The Board, or the officer or Reserve Bank authorized to approve an application, may waive or modify any procedural requirements for that application prescribed or cited in this section and may excuse any failure to comply with them upon a finding that immediate action on the application is necessary to prevent the probable failure of a bank or company or that an emergency exists requiring expeditious action.

(12 U.S.C. 1842(a), 1843, and 1844(b), 12 U.S.C. 1828(c), 321 and 248(i))

[38 FR 6807, Mar. 13, 1973, as amended at 42 FR 56719, Oct. 28, 1977; 43 FR 47157, Oct. 12, 1978; 43 FR 49973, Oct. 26, 1978; 44 FR 64399, Nov. 7, 1979; 45 FR 81544, Dec. 11, 1980; 46 FR 5861, Jan. 21, 1981; 49 FR 5605, Feb. 14, 1984]

§ 262.4 Adjudication with formal hearing.

In connection with adjudication with respect to which a formal hearing is required by law or is ordered by the Board, the procedure is set forth in Part 263 of this chapter, entitled "Rules of Practice for Formal Hearings."

§ 262.5 Appearance and practice.

Appearance and practice before the Board in all matters are governed by § 263.3 of this chapter.

§ 262.6 Forms.

Necessary forms to be used in connection with applications and other matters are available at the Federal Reserve Banks. A list of all such forms, which is reviewed and revised periodically, may be obtained from any Federal Reserve Bank.

(a) This action is taken pursuant to and in accordance with the provisions of section 552 of Title 5 of the United States Code.

(b) The provisions of section 553 of Title 5, United States Code, relating to notice and public participation and to deferred effective dates, are not followed in connection with the adoption of this action, because the rules involved are procedural in nature and accordingly do not constitute substantive rules subject to the requirements of such section.

§§ 262.7—262.24 [Reserved]

§ 262.25 Policy statement regarding notice of applications; timeliness of comments; informal meetings.

(a) *Notice of applications.* A bank or company applying to the Board for a deposit-taking facility must first publish notice of its application in local newspapers. This requirement, found in § 262.3(b)(1) of the Board's Rules of Procedure covers applications under the Bank Holding Company Act and Bank Merger Act, as well as applications for membership in the Federal Reserve System and for new branches of State member banks. Notices of these applications are published in newspapers of general circulation in the communities where the applicant intends to do business as well as in the community where the applicant's head office is located. These notices are important in calling the public's attention to an applicant's plans and giving the public a chance to comment on these plans. To improve the effectiveness of the notices, the Board has supplemented its notice procedures as follows.

(1) The Board has adopted standard forms of notice for use by applicants that will specify the exact date on which the comment period on the application ends, which may not be less than thirty calendar days from the date of publication of the first notice. The newspaper forms also provide the name and telephone number of the Community Affairs Officer of the appropriate Reserve Bank as the person to call to obtain more information about submitting comments on an application. In general, the Community Affairs Officer will be available to answer questions of a general nature concerning the submission of comments and the processing of applications.

(2) The Board also publishes notice of bank holding company applications for bank acquisitions (but not for bank mergers or branches) in the FEDERAL REGISTER after the application is received and the Community Affairs Officer can provide the exact date on which this comment period ends. (The FEDERAL REGISTER comment period will

generally end after the date specified in the newspaper notice.)

(3) In addition to the formal newspaper and Federal Register notices discussed above, each Reserve Bank publishes a weekly list of applications submitted to the Reserve Bank for which newspaper notices have been published. Any person or organization may arrange to have the list mailed to them regularly, or may request particular lists, by contacting the Reserve Bank's Community Affairs Officer. Each Reserve Bank's list includes only applications submitted to that particular Reserve Bank, and persons or groups should request lists from each Reserve Bank having jurisdiction over applications in which they may be interested. Since the lists are prepared as a courtesy by the Reserve Bank, and are not intended to replace any formal notice required by statute or regulation, the Reserve Banks and the Board do not assume responsibility for errors or omissions. In addition, the weekly lists prepared by Reserve Banks include certain applications by bank holding companies for nonbank acquisitions filed with the Reserve Bank.

(4) With respect to applications by bank holding companies to engage *de novo* in nonbank activities or make acquisitions of nonbank firms, the Board publishes notice of most of these applications in the Federal Register when the applications are filed. Notice of certain small acquisitions may be published in a newspaper of general circulation in the area(s) to be served. While applications for nonbanking activities are not covered by the provisions of the Community Reinvestment Act or the notice provisions of § 262.3 of the Board's Rules of Procedure, the provisions of this Statement apply to such applications.

(b) *Timeliness of comments.*

(1) All comments must be actually received by the Board or the Reserve Bank on or before the last date of the comment period specified in the notice. Where more than one notice is published with respect to an application, comments must be received on or before the last date of the latest comment period. The Board's Rules allow it to disregard comments received after the comment period expires. In particular, § 262.3(e) of the Board's Rules of Procedure states that the Board will not consider comments on an application that are not received on or before the expiration of the comment period. Thus, a commenter who fails to comment on an application within the specified comment period (or any extension) may be precluded from participating in the consideration of the application.

(2) In cases where a commenter for good cause is unable to send its comment within the specified comment period, § 265.2(a)(10) of the Board's Rules Regarding Delegation of Authority (12 CFR 265.2(a)(10)) allows the Secretary of the Board to grant requests for an extension of the period. Under this provision, upon receipt of a request received on or before the expiration of the comment period, the Secretary may grant a brief extension upon clear demonstration of hardship or other meritorious reason for seeking additional time.

(c) *Private meetings.* When a timely protest to approval of an application is received, the Reserve Bank may arrange a meeting between the applicant and the protestant to clarify and narrow the issues, and to provide a forum for the resolution of differences between the protestant and the applicant. If the Reserve Bank decides that a private meeting would be appropriate, the Reserve Bank will arrange a private meeting soon after the receipt of a protest and the applicant's response, if any, to the protest. In scheduling the meeting, the Reserve Bank will consider convenience to the parties with respect to the time and place of the meeting. A decision to hold a private meeting will not preclude the Reserve Bank or the Board from holding a public meeting or other proceeding if it is deemed appropriate.

(d) *Public meetings.* The Board's General Counsel (in consultation with the Reserve Bank and the directors of other interested divisions of the Board) may order that a public meeting or other proceeding be held if requested by the applicant or a protestant who files a timely protest, or if such a proceeding appears appropriate. In most instances, the determination to order a public meeting will be made after a private meeting has been held; however, where appropriate a public meeting may be convened immediately after receipt of the protest and the applicant's response, if any. Additional information may be requested prior to making a determination to convene a public meeting. In these cases, a determination will be made within ten days from the date all relevant information is received. The public meeting will be scheduled as soon as possible, but in no event, later than 30 days after the decision to hold the proceeding is made. The purpose of the public meeting will be to elicit information, to clarify factual issues related to the application and to provide an opportunity for interested individuals to provide testimony. The Board has adopted the following guidelines to be used for convening public meetings, although specific provisions may be altered by the General Counsel if circumstances warrant.

(1) *Requesting a public meeting.* A meeting may be requested by a person or an organization objecting to the application during the comment period, and by the applicant during the period within which it must respond to comments. Such a request must be timely and in writing.

(i) A protest does not have to be filed in a legal brief or other format in order for a public meeting to be granted. The Community Affairs Officer at the Reserve Bank will be available to assist any member of the public regarding the types of information generally included in protests; the format generally used by protestants; and any other specific questions about the procedures of the Federal Reserve System regarding protested applications.

(ii) In general, a protest should identify the protestant, state the basis for objection to approval of the application, and provide available written evidence to support the objection. Objections to approval of an application must relate to the factors that the Board is authorized to consider in acting on an application. Generally, these factors relate to the financial and managerial resources of the companies and banks involved, the effects of the proposal on competition, and the convenience and needs of the communities to be served by the companies and banks involved. If a public meeting is requested, the protest should indicate that there are members of the public who wish to speak on the issues in a public forum.

(iii) The protest will be transmitted by the Reserve Bank to the applicant, and the applicant will generally be allowed eight business days to respond in writing to the protest.

(2) *Arranging the public meeting.* Public meetings will be arranged and presided over by a representative of the Federal Reserve System ("Presiding Officer"). In determining the time and place for the public meeting, such factors as convenience to the parties, the number of people expected to attend the meeting, access to public transportation and possible after-hour security problems will be taken into account.

(3) *Conducting the public meeting.* Prior to the meeting, all necessary steps will be taken to ensure that the meeting is conducted appropriately, including scheduling of witnesses, submission of written materials and other arrangements. In conducting the public meeting the Presiding Officer will have the authority and discretion to ensure that the meeting proceeds in a fair and orderly manner. Generally, the public meeting will consist of opening and closing remarks by the Presiding Officer, a presentation by the protestant and a presentation by the applicant. An official transcript will be made of the proceedings and entered into the record. The conclusion of the public meeting normally marks the close of the public portion of the record on the application.

(4) *Notification of Board decision on the application.* After a decision is made on the application, and the applicant is notified of the decision, staff will notify the protestant by telephone. This notification will be confirmed promptly in writing. As set forth in § 262.3(k) of the Board's Rules of Procedure (12 CFR 262.3(k)) or § 265.3 of the Board's Rules Regarding Delegation of Authority (12 CFR 265.3), a party to the application may request reconsideration of the Board's

order, or review of the Reserve Bank's decision.

[49 FR 5603, Feb. 14, 1984]

PART 263—RULES OF PRACTICE FOR HEARINGS

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Authority: Sec. 11, 38 Stat. 262, sec. 202, 80 Stat. 1052, sec. 2[18], 64 Stat. 873, as amended, sec. 5, 70 Stat. 137, sec. 8, 38 Stat. 732 as amended; 12 U.S.C. 248, 1818, 1828, 1844, 15 U.S.C. 19.

Subpart A—Rules of Practice for Formal Hearings

Source: 32 FR 11140, Aug. 1, 1967, unless otherwise noted.

§ 263.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under sections 11(i), 19, and 29 of the Federal Reserve Act, as amended (12 U.S.C. 248(i), 504, and 505); sections 5(b) and 8(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b) and 1847(b)); section 106(b)(2)(F) of the Bank Holding Company Act Amendments of 1970, as amended (12 U.S.C. 1972(2)(F)); sections 7(j) and 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1817(j) and 1818); section 13 of the International Banking Act of 1978 (12 U.S.C. 3108); and section 15B(c)(5) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o-4).

(b) *Purpose and scope.* This subpart prescribes rules of practice and procedure governing adjudications as to which a formal hearing is required by law or is for other reason ordered by the Board. These adjudications include:

(1) Suspension of a member bank from the use of credit facilities of the Federal Reserve System under section 4 of the Federal Reserve Act (12 U.S.C. 301);

(2) Termination of a bank's membership in the Federal Reserve System

under section 9 of the Federal Reserve Act (12 U.S.C. 327);

(3) Issuance of a cease-and-desist order under section 11 of the Clayton Act (15 U.S.C. 21);

(4) Issuance of a cease-and-desist order or a removal or suspension order under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818);

(5) Adjudications under sections 2, 3 or 4 of the Bank Holding Company Act (12 U.S.C. 1841, 1842, or 1843);

(6) Issuance of a divestiture order against a bank holding company under section 5(e) of the Bank Holding Company Act (12 U.S.C. 1844(e));

(7) Disapproval of a proposed acquisition of control of a State member bank or a bank holding company under section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j));

(8) Imposition of sanctions upon any municipal securities dealer for which the Board is the appropriate regulatory agency, or upon any person associated or seeking to become associated with such a municipal securities dealer, under section 15B(c)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4);

(9) Formal adjudications on bank merger applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)); and

(10) Assessment of a civil money penalty for a violation of any provision of: the Bank Holding Company Act of 1956, as amended, or any order or regulation issued thereunder (12 U.S.C. 1847(b)); sections 19, 22, or 23A of the Federal Reserve Act, or any order or regulation issued thereunder (12 U.S.C. 504, 505); the terms of a final cease-and-desist order issued under the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)); or the provisions of 106(b)(2) of the Bank Holding Company Act Amendments of 1970, as amended (12 U.S.C. 1972(2)(F)).

[44 FR 56687, Oct. 2, 1979]

§ 263.2 Definitions.

As used in this part:

(a) "Member bank" means any bank that is a member of the Federal Reserve System.

(b) "Party" means a person or agency named or admitted as a party, or any person or agency who has filed a written request and is entitled as of right to be admitted as a party. A person or agency may be admitted for a limited purpose without being regarded as a party.

(c) "Secretary" means the Secretary of the Board of Governors of the Federal Reserve System.

[44 FR 56687, Oct. 2, 1979]

§ 263.3 Appearance and practice before the Board.

(a) *Power of attorney and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State or of the District of Columbia, or of any possession, territory, or Commonwealth of the United States, may represent others before the Board upon filing with the Secretary a written declaration that he is currently qualified as provided in this paragraph, and is authorized to represent the particular party on whose behalf he acts. Any other person desiring to appear before or transact business with the Board in a representative capacity may be required to file with the Secretary a power of attorney showing his authority to act in such capacity, and he may be required to show to the satisfaction of the Board that he has the requisite qualifications. Attorneys and other representatives of parties to proceedings shall file a written notice of appearance with the Secretary or with the presiding officer.

(b) *Conduct during hearings.* All participants in a hearing, or a conference held in connection therewith, shall conduct themselves with dignity and in an orderly and ethical manner. The attorney or other representative of a party shall make every effort to restrain a client from improper conduct in connection with a proceeding. Improper language or conduct, refusal to comply with directions, continued use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct constitute grounds for immediate exclusion from the proceeding at the direction of the presiding officer.

[32 FR 11140, Aug. 1, 1967, as amended at 44 FR 56687, Oct. 2, 1979]

§ 263.4 Notice of hearing.

Whenever a hearing is ordered by the Board, notice of such hearing (together with a copy of any document incorporated therein by reference) shall be given by the Secretary or other designated officer acting for the Board to the party or parties to the proceeding and to the appropriate financial institution supervisory authority where required by law. The Board may give whatever additional notice is deemed appropriate in any given hearing. Such notice shall state the time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, and the name and address of the presiding officer, if one has been designated, and shall also contain, or incorporate by appropriate reference, a statement of the matters of fact or law constituting the grounds for the hearing. Unless otherwise provided by law or ordered by the Board, notice of any hearing shall be given not less than 20 days prior to the date set for hearing and shall be given general circulation by publication in the FEDERAL REGISTER and, where practical, by release to the press. The Board may amend a notice of hearing in any manner and to the extent consistent with provisions of applicable law.

§ 263.5 Answer.

(a) *When required.* In any notice of hearing issued by the Board, the Board may direct the party or parties afforded the hearing to file an answer to the allegations contained in the notice or referenced documents, and any party to any proceeding may file an answer. Except where a different period is provided by law or specified by the Board, a party directed to file an answer, or a party who elects to file an answer, shall file the same with the Secretary within 20 days after service upon him of the notice of hearing.

(b) *Requirements of answer; effect of failure to deny.* An answer filed under this section shall specifically admit, deny, or state that the party does not have sufficient information to admit or deny each allegation in the notice of hearing. A statement of lack of information shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party intends to deny only a part or a qualification of an allegation, he shall admit so much of it as is true and shall deny only the remainder.

(c) *Admitted allegations.* If a party filing an answer under this section elects not to contest the allegations of fact set forth in the notice of hearing or referenced documents, his answer shall consist of a statement that he admits all of the allegations to be true. Such an answer shall constitute a waiver of hearing as to the facts alleged, and together with the notice and any referenced documents will provide a record basis on which the presiding officer shall file with the Secretary his recommended decision and his findings of fact and conclusions of law. Such admission shall not constitute a waiver of the right of such party to file with the Secretary exceptions to such recommended decision, findings and conclusions.

(d) *Effect of failure to answer.* Failure of a party to file an answer required by this section within the time provided shall constitute a waiver of his right to appear and contest the allegations of the notice of hearing and shall constitute authorization for the presiding officer, without further notice to the party, to find the facts to be as alleged in the notice and to file with the Secretary a recommended decision containing such findings and appropriate conclusions. The Board or the presiding officer may, for cause shown, permit the filing of an answer after the prescribed time.

(e) *Opportunity for informal settlement.* Any interested party may at any time submit to the Secretary, for consideration by the Board, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No offer or proposal shall be admissible in evidence over the objection of any party in any hearing in connection with such proceeding. The foregoing provisions of this paragraph shall not preclude settlement of any proceeding through the regular adjudicatory process by the filing of an answer as provided in paragraph (c) of this section, or by the submission of the case to the presiding officer on a stipulation of facts and an agreed order.

§ 263.6 Conduct of hearings.

(a) *Designation of presiding officer.* (1) When evidence is to be taken in a hearing, the Board or, when duly designated by the Board for that purpose, one or more of its members, an administrative law judge, or other hearing officer(s) lawfully appointed by the Board may preside at the hearing. Unless otherwise provided in the notice of hearing, all hearings for the taking of evidence shall be conducted as hereinafter provided.

(2) Except as authorized by law, the presiding officer shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent of the Board engaged in the performance of investigative or prosecuting functions.

(3) A designated presiding officer who deems himself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such presiding officer, the Board will rule on the matter as a part of the record and decision in the case.

(b) *Authority of presiding officer.* All hearings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The presiding officer shall have complete charge of the hearing, and he shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings. Such officer shall have all powers necessary to that end, including but not limited to the following:

(1) To administer oaths and affirmations;

(2) To issue subpenas and subpenas duces tecum, as authorized by law, and to revoke, quash, or modify any such subpena;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold conferences for the settlement or simplification of issues or for any other proper purpose; and

(7) To consider and rule upon, as justice may require, all procedural and other motions appropriate in an adversary proceeding, except that a presiding officer other than the Board shall not have power to decide any motion to dismiss the proceedings or other motion which would result in final determination of the merits of the proceedings.

Without limitations on the foregoing, the presiding officer shall, subject to the provisions of this part, have all the authority set forth in section 556(c) of title 5 of the United States Code.

(c) *Prehearing conference.* The presiding officer may, on his own initiative or at the request of Board counsel or of any party, direct all parties or counsel to meet with him at a specified time and place prior to the hearing, or to submit suggestions to him in writing, for the purpose of considering any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations and admissions of fact and of the content and authenticity of documents;

(3) Matters of which official notice will be taken; and

(4) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding. Such conferences, in the discretion of the presiding officer, need not be recorded, but the presiding officer shall enter in the record an order which recites the results of the conference. Such order, a copy of which shall be served on each party and Board counsel, shall include the officer's rulings upon matters considered at the conference, together with appropriate directions, if any, to the parties and Board counsel; and such order shall control the subsequent course of the proceedings, unless modified at the hearing, for good cause found, by appropriate order of the presiding officer.

(d) *Attendance at hearings; representation of the Board.* Unless otherwise specifically provided by statute or by rule of the Board, a hearing shall ordinarily be private and shall be attended only by the parties, their representatives or counsel, representatives of the Board, witnesses while testifying, and other persons having an official interest in the proceedings: *Provided, however,* That on written request by a party or a representative of the Board, or on the Board's own motion, the Board, in its discretion and to the extent permitted by law, may permit other persons to attend or may order the hearing to be public. In connection with any such hearing or proceeding related thereto, the Board may designate as board counsel an attorney from its staff or other attorney who shall represent the Board. For the purposes of these Rules, any attorney so designated is referred to as "Board counsel." In case of adjudication other than initial licensing proceedings, neither Board counsel nor any officer or employee of the Board who has engaged in the performance of any investigative or prosecutive function in the case, or a factually related case, may participate in or advise as to the presiding officer's recommended decision or the Board's decision, except as witness or counsel in such hearing or related proceeding. Proceedings with respect to applications for initial licenses shall include, but not be limited to, applications for Board approval under section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) and such proceedings as may be ordered by the Board with respect to applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)). In such initial licensing proceedings, Board counsel shall represent the Board in a nonadversary capacity for the purpose of developing for the record information relevant to the issues to be determined by the presiding officer and the Board.

(e) *Transcript of testimony.* Hearings shall be recorded and transcripts will be made available at prescribed rates to any party and, in the event the hearing is public, to any other interested persons. The presiding officer shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties or, following notice to the parties, upon the presiding officer's initiative. The transcript of testimony taken at any hearing, duly certified by the reporter, together with all exhibits, papers and requests, briefs or memoranda of law filed in connection with the hearing shall be filed in duplicate with the Secretary by the presiding officer. The Secretary shall promptly serve notice upon each of the parties of such filing and transmittal. Following the service of notice of filing of the record, the record shall be returned to the presiding officer.

(f) *Continuances and changes or extensions of time and changes of place of hearing.* Except as otherwise expressly provided by law, the Board may by the notice of hearing or subsequent order provide time limits different from those specified in this part, and may, on its own initiative or for good cause shown, change or extend any time limit prescribed by these rules or the notice of hearing, or change the time or place for beginning any hearing hereunder. The presiding officer may, for good cause shown, and as permitted by law, change the time or place for beginning such hearing and may continue or adjourn a hearing from time to time or from place to place. Extensions of time for making any filing or performing any act required or allowed to be done within a specified time in the course of a hearing may be granted by the presiding officer for good cause shown.

(g) *Call for further evidence, oral argument, briefs, reopening of hearing.* The presiding officer may call for the production of further evidence upon any issue, may permit oral argument, the submission of briefs at the hearing and, upon appropriate notice, may reopen any hearing at any time prior to the certification of his recommended decision to the Secretary. The Board may reopen the record at any time permitted by law.

(h) *Ex parte communications.* For the purposes of this section, "ex parte communication" means an oral or written communication that is not on the public record and for which reasonable prior notice to all parties has not been given, but does not include requests for status reports. The following prohibitions against any ex parte communication apply from the time of issuance of a notice for a formal hearing in the proceeding or from the time the person responsible for the communication has knowledge that a notice for a hearing will be issued.

(1) No member of the Board nor the presiding officer nor any other person who is, or may reasonably be expected to be, involved in the decisional process in a proceeding conducted under this subpart shall make, or knowingly cause to be made, an ex parte communication relevant to the merits of the proceeding to any interested person outside the Federal Reserve System. Any member of the Board, the presiding officer, or other person who receives, makes, or knowingly causes to be made any ex parte communication prohibited by this paragraph shall place on the public record of the proceeding:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (h)(1) (i) and (ii) of this section.

(2) No interested person outside the Federal Reserve System shall make, or knowingly cause to be made, an ex parte communication relevant to the merits of a proceeding conducted under this subpart to any member of the Board, to the presiding officer or to anyone who is, or may reasonably be expected to be, involved in the decisional process in the proceeding. Upon receipt of a communication in violation of this paragraph, the Board or the presiding officer may require the party responsible for the ex parte communication to show cause why that party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation. To the extent consistent with the interests of justice and the policy of the statute under which the hearing is being held, a knowing violation of this paragraph may constitute sufficient grounds for a decision adverse to the responsible party.

(3) Except as authorized by law, the presiding officer shall not consult any person or party on any fact in issue unless notice and opportunity is given for all parties to participate.

[32 FR 11140, Aug. 1, 1967, as amended at 44 FR 56688, Oct. 2, 1979]

§ 263.7 Subpenas.

(a) *Issuance.* Where authorized by law, subpenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the Board upon its own motion, will issue only upon application in writing to the presiding officer or, in the event he is unavailable, to the Board, except that during sessions of a hearing, such application may be made orally on the record before the presiding officer. The person seeking the subpena may be required, as a condition precedent to the issuance of the subpena, to show the general relevance and reasonable scope of the testimony or other evidence sought. In the event the presiding officer or the Board, after consideration of all the circumstances, determines that the requested subpena or any of its terms is unreasonable, oppressive, excessive in scope, unduly burdensome, or otherwise improper, he or it may refuse to issue the subpena, or issue it only upon such conditions as fairness requires.

(b) *Motion to quash.* Any person to whom a subpena is directed may, prior to the time specified therein for compliance, but in no event more than 5 days after the date of service of such subpena, with notice to the party requesting the subpena, apply to the presiding officer or, if he is unavailable, to the Board, to revoke, quash, or modify such subpena, accompanying such application with a statement of the reasons therefor.

(c) *Service of subpena.* (1) Service of a subpena may be made by personal service or, except as otherwise required by law, by registered mail addressed to the last known address of the person named in the subpena and by tendering the fees for one day's attendance and mileage as specified in paragraph (d) of this section. In making personal service of a subpena, the original shall be exhibited to, and a copy thereof left with, the person named in the subpena. Service of the subpena and tender of fees to a natural person may also be made by leaving a copy of the subpena and fees at the person's dwelling place or usual place of abode with someone of suitable age or discretion. When the person to be served is not a natural person, delivery of a copy of the subpena and tender of the fees may be effected by handing them to a registered agent for service or to an officer, director, or agent in charge of any office of the person, or by mailing them by registered mail to such representative at that person's last known address.

(2) Service made by a United States marshal or his deputy shall be evidenced by that person's return on the original subpena. If made by any other person, that person shall make affidavit thereto, describing the manner in which service was made, and return the affidavit on or with the original subpena. In case of failure to make service, the reasons for the failure shall be stated on the original subpena. The original subpena, bearing or accompanied by the required return, affidavit, or statement, shall be returned without delay to the Secretary or, if so directed on the subpena, to the presiding officer before whom the person named in the subpena is required to appear.

(d) *Attendance of witnesses.* (1) The attendance of witnesses and the production of documents pursuant to a subpena issued in connection with a hearing under this subpart may be required from any State or territory or any other place subject to the jurisdiction of the United States at any designated place where the hearing is being conducted. Any person who is compelled to appear and testify, or who appears and testifies by request or permission, may be accompanied, represented, or advised by counsel.

(2) Subpenaed witnesses shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. When a subpena is issued upon the Board's own motion or at the request of Board counsel, fees and mileage need not be tendered at the time of service of the subpena. Fees required by this paragraph shall be paid by the person upon whose application the subpena is issued.

[32 FR 11140, Aug. 1, 1967, as amended at 44 FR 56688, Oct. 2, 1979]

§ 263.8 Depositions.

(a) *When permissible.* The Board or presiding officer, upon its or his own motion or upon appropriate application by a party to the proceeding or Board counsel, may, by subpena or subpena duces tecum, order evidence to be taken by deposition at any stage of any proceeding in which such depositions are authorized. Depositions may be taken before the presiding officer or before any person designated in the subpena and having the power to administer oaths.

(b) *Notice and application.* Unless notice is waived, no deposition shall be taken except after at least 5 days' written notice to Board counsel and the parties to the proceeding or their attorneys of record and to the Board. In such notice and application to take evidence by deposition, the party desiring to take the deposition shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, its relevance, the time, place, and the name and post office address of the person before whom it is desired the deposition be taken, and the reason why such deposition should be taken. Thereupon, the presiding officer or the Board may, in his or its discretion, by subpena or subpena duces tecum, order the oral deposition to be taken. Such subpena will name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is ordered to be taken, may or may not be the same as those named in the notice and application. Notice of the issuance of such subpena shall be served upon each of the parties a reasonable time in advance of the time fixed for the taking of the deposition, but in no event less than 5 days in advance of such time.

(c) *Procedure on deposition; objections.* (1) Each witness testifying upon oral deposition shall be duly sworn or shall affirm, and Board counsel and any adverse party shall have the right to cross-examine the witness. Objections to questions or documents shall be in short form, stating the grounds of objection relied upon. The person recording the deposition shall not have any authority to rule upon questions of competency, materiality, or relevancy of evidence. Evidence objected to shall be taken subject to the objection. Failure to object to questions or evidence shall not be deemed a waiver unless the ground of the objection is one which might have been obviated or removed if presented at the time of the question or submission of evidence.

(2) All questions, answers, and objections (but not including argument or debate) shall be recorded by, or under the direction of, the officer before whom the deposition is taken. The deposition shall be subscribed to by the witness, unless the parties by stipulation waive the signing or unless the witness is physically unable to sign, cannot be found, or refuses to sign. The person recording the deposition shall certify the transcript of the deposition as true and complete. If the deposition is not subscribed to by the witness, the person recording the testimony shall state this fact and the reason therefor on the record.

(3) The officer before whom the deposition is taken shall promptly deliver, or send by registered mail, the original of the deposition, together with the original of all exhibits, to the Secretary of the Board unless otherwise directed in the order authorizing the taking of the deposition or in the notice of its issuance. Interested parties shall make their own arrangements with the person recording the testimony for copies of the deposition and exhibits.

(d) *Introduction as evidence.* Subject to appropriate rulings by the presiding officer on such objections and answers as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying, the deposition or any part thereof may be received in evidence by the presiding officer. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.

(e) *Payment of fees.* Deponents whose oral depositions are taken and the reporter taking the same shall be entitled to the same fees as are paid for like services in the courts of the United States, which fees shall be paid by the person upon whose application the deposition is taken.

[32 FR 11140, Aug. 1, 1967, as amended at 44 FR 56688, Oct. 2, 1979]

§ 263.9 Rules of evidence.

(a) *Evidence.* Every party shall have the right to present his case or defense by oral and documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(b) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument except as ordered by the presiding officer. Rulings on such objections and on any other matters shall be a part of the transcript. Failure to object to admission or exclusion of evidence or to any ruling shall be considered a waiver of such objection, but no exception to a ruling on an objection need be noted before the presiding officer in order to urge the same in the consideration of the matter by the Board.

(c) *Stipulations.* Independently of the orders or rulings issued as provided by § 263.6(c), the parties and Board counsel may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received shall be binding on the parties and Board counsel with respect to the matters therein stipulated.

(d) *Official notice.* All matters officially noticed by the presiding officer shall appear on the record.

§ 263.10 Motions.

(a) *In writing.* An application or request for an order or ruling not otherwise specifically provided for in this part shall be made by motion. After a presiding officer has been designated and before the filing with the Secretary of his recommended decision, pursuant to § 263.11, such applications or requests shall be addressed to and filed with him. At all other times motions shall be addressed to the Board and filed with the Secretary. Motions shall be in writing, except that a motion made at a session of a hearing may be made orally upon the record unless the presiding officer directs that it be reduced to writing. All written motions shall state with particularity the order or relief sought and the grounds therefor. When a motion is addressed to the presiding officer, an original and two copies of such motion shall be filed.

(b) *Objections.* Within 5 days after service of any written motion, or within such other period as may be fixed by the presiding officer or the Board, any party may file a written answer or objection to such motion, together with two copies thereof. The moving party shall have no right to reply, except as permitted by the presiding officer or the Board. The presiding officer or the Board, in his or its discretion, may waive the requirements of this section as to motions for extensions of time, and may rule upon such motions ex parte.

(c) *Oral argument; briefs.* No oral argument will be heard on motions except as otherwise directed by the presiding officer or the Board. Written memoranda or briefs may be filed with motions or answers or objections, stating the points and authorities relied upon in support of the position taken.

(d) *Rulings on motions.* Except as otherwise provided in this part, the presiding officer shall rule upon all motions properly addressed to him and upon such other motions as the Board may direct, except that if the presiding officer finds that a prompt decision by the Board on a motion is essential to the proper conduct of the proceeding, he may refer such motion to the Board for decision. The Board shall rule upon all motions properly submitted to it for decision.

(e) *Appeal from rulings on motions.* All motions and answers or objections and rulings thereon shall become part of the record. The rulings of a presiding officer on any motion may not be appealed to the Board prior to its consideration of the presiding officer's recommended decision, findings, and conclusions except by special permission of the Board, but shall be considered by the Board in reviewing the record. Requests to the Board for special permission to appeal from such rulings of the presiding officer shall be filed promptly, in writing, and shall briefly state the grounds relied on.

(f) *Continuation of hearing.* Unless otherwise ordered by the presiding officer or the Board, the hearing shall continue pending the determination of any motion by the Board.

(g) *Closing of hearing.* The record of the hearing shall be closed by announcement to that effect by the presiding officer when the taking of evidence has been concluded. In the discretion of the presiding officer, the record may be closed as of a future date in order to permit the admission into the record, under circumstances determined by the presiding officer, of exhibits to be prepared.

§ 263.11 Proposed findings and conclusions and recommended decision.

(a) *Proposed findings and conclusions and supporting briefs.* Board counsel or any party who may wish to file with the presiding officer proposed findings and conclusions of law shall file the same, with two copies thereof, within 15 days after the receipt of written notice from the Secretary advising that the transcript has been filed with the Secretary. Proposed findings and conclusions shall be supported by citation to any relevant authorities and by page references to any relevant portions of the record and, in addition, may be accompanied by a brief in support thereof. In initial licensing proceedings, in lieu of proposed findings and conclusions of law, and within such time as the presiding officer may allow, Board counsel may submit comments with respect to the evidence of record and/or proposed findings and conclusions of law submitted by any party. All such proposed findings and conclusions of law, briefs, and other submissions shall become part of the record.

(b) *Recommended decision and filing of record.* In a proceeding in which the Board or one or more of its members has not presided at the reception of evidence, the presiding officer shall, within 45 days after the expiration of the time allowed for the filing of proposed findings and conclusions, or within such other time as the Board for good cause shall prescribe, file with the Secretary and certify to the Board for decision the entire record of the hearing, which shall include his recommended decision and findings of fact and conclusions of law, the transcript, exhibits (including on request of any of the parties any exhibits excluded from evidence or tenders of proof), exceptions, rulings, and all briefs and memoranda filed in connection with the hearing. Promptly upon such filing the Secretary shall serve upon each party to the proceeding a copy of the presiding officer's recommended decision, and findings and conclusions.

(c) *Board as presiding officer.* In proceedings in which the Board or one or more of its members has presided at the reception of evidence, the presiding officer's recommended decision, findings of fact, and conclusions of law will be omitted. In such proceedings the proposed findings and conclusions of law, briefs, and other submissions permitted under paragraph (a) of this section shall be filed with the Secretary for consideration by the Board.

§ 263.12 Exceptions.

(a) *Filing.* Within 15 days after service of the recommended decision and findings and conclusions of the presiding officer, or such further time as the Board for good cause shall determine, any party or Board counsel may file with the Secretary exceptions thereto or to any part thereof, or to the failure of the presiding officer to make any recommendation, finding, or conclusion, or to the admission or exclusion of evidence, or other ruling of the presiding officer, supported by such brief as may appear advisable. In any proceeding where the Board or one or more of its members is the presiding officer, the provisions of this section will not be applicable.

(b) *Waiver.* Failure to file exceptions to the recommended decision of the presiding officer or any portion thereof, or to his failure to adopt a proposed finding or conclusion, or the admission or exclusion of evidence or other ruling of the presiding officer, within the time prescribed in paragraph (a) of this section, shall be deemed to be a waiver of objection.

§ 263.13 Briefs.

(a) *Contents.* All briefs shall be confined to the particular matters in issue. Each proposed finding, conclusion, or exception which is briefed shall be supported by a concise supporting statement or by citation of relevant statutes, regulations, decisions, or other authorities and by page reference of relevant portions of the record or recommended decisions of the presiding officer. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate page references to the transcript.

(b) *Answering briefs.* Answering briefs may be filed within 10 days after the service of briefs and shall be confined to matters in the original briefs of opposing parties. Further briefs may be filed with the presiding officer only with his permission or that of the Board, and may be filed with the Board only with its permission.

§ 263.14 Oral argument before the Board.

Upon its own initiative, or upon written request by any party or Board counsel, the Board, in its discretion, may order the matter to be set down for oral argument before the Board or one or more members thereof. Any request for oral argument by a party filing exceptions shall be made within the time prescribed for filing such exceptions, or by any other party, within the time prescribed for the filing of an answering brief. Oral argument before the Board shall be recorded unless otherwise ordered by the Board.

§ 263.15 Decision of Board.

Appropriate members of the Board's staff who are not engaged in the performance of investigative or prosecuting functions in the case, or in a factually related case, may advise and assist the Board in the consideration of the case and in the preparation of appropriate documents for its disposition. Copies of the decision and order of the Board shall be served by the Secretary upon the parties to the proceedings and furnished to such other persons as the Board may direct or the law may require.

§ 263.16 Filing papers.

Recommended decisions, exceptions, briefs and other papers required to be filed with the Board or Secretary in any proceedings shall be filed with the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Any such papers may be sent to the Secretary by mail or express but must be received in the office of the Board in Washington, D.C., within the time limit for such filing.

§ 263.17 Service.

(a) *By the Board.* All documents or papers required to be served by the Board shall be served by the Secretary unless some other person shall be designated for such purpose by the Board. Such service, except for service on Board counsel, shall be made by personal service or by registered mail on the attorney or representative of record of the party, addressed to the last known address as shown on the records of the Board, provided that if there is no attorney or representative of record, such service shall be made upon such party at the last known address as shown on the records of the Board. Such service may also be made in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide.

(b) *By the parties.* All documents or papers filed in a proceeding under this part shall be served by the party filing the same upon Board counsel and the attorneys or representatives of record of all other parties, or, if any party is not so represented, then upon such party. Such service may be made by personal service or by registered, certified, or regular first-class mail addressed to the last known address of such parties, or their attorneys or representatives of record. All such documents or papers, when tendered to the Board or the presiding officer for filing, shall contain a certificate of service.

§ 263.18 Copies.

Unless otherwise specifically provided in the notice of hearing, an original and seven copies of all documents and papers required or permitted to be filed or served upon the Secretary under this part shall be furnished to the Secretary, except that an original and only one copy of the transcript of testimony and exhibits shall be filed with the Secretary by the presiding officer. All documents and papers filed with the presiding officer shall be filed in duplicate.

§ 263.19 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this part, the date of the act, even or default from which the designated period of time begins to run is not to be included. The last day so computed is to be included, unless it is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the time within which the act is to be performed is 10 days or less, in which event Saturdays, Sundays, and legal holidays shall not be included. Half holidays shall not be considered as holidays.

(b) *Service by mail.* Whenever any party has the right or is required to do some act within a period of time prescribed in this part, after the service upon him of any document or other paper of any kind, and such service is made by mail, 3 days shall be added to the prescribed period from the date when the matter served is deposited in the U.S. mail.

§ 263.20 Documents in proceedings confidential.

Unless and until otherwise ordered by the Board or unless otherwise provided by statute or by Board regulation, the notice of hearing, the transcript, the proposed findings and conclusions, the recommended decision of the presiding officer, exceptions thereto, the findings and conclusions of the Board and other papers which are filed in connection with any hearing shall not be made public, and shall be for the confidential use only of the Board and its staff, the presiding officer, the parties and, where appropriate, other supervising authorities.

§ 263.21 Formal requirements as to papers filed.

(a) *Form.* All papers filed under this subpart shall be printed, typewritten, or otherwise reproduced. All copies shall be clear and legible.

(b) *Signature.* All papers shall be dated and signed by the party filing the same, or his duly authorized agent or attorney, or Board counsel, and, except in the case of Board counsel, shall indicate the address of the signer.

(c) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the Board and of the filing party, the title of the proceeding, and the subject of the particular paper.

Subpart B—Rules and Procedures for Assessment and Collection of Civil Penalties

SOURCE: 44 FR 56689, Oct. 2, 1979, unless otherwise noted.

§ 263.22 Purpose and scope.

The rules and procedures specified in this subpart and in Subpart A are applicable to proceedings by the Board to assess and collect civil money penalties for a violation of:

(a) The terms of a final cease-and-desist order issued under the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2));

(b) The provisions of sections 19, 22, or 23A of the Federal Reserve Act, or any regulation or order issued thereunder, (12 U.S.C. 504 and 505);

(c) Any provision of the Bank Holding Company Act of 1956, as amended, or any regulation or order issued thereunder, (12 U.S.C. 1847(b); or

(d) The provisions of section 106(b)(2) of the Bank Holding Company Act Amendments of 1970, as amended (12 U.S.C. 1972(2)(F)). The rules and procedures of this subpart do not apply to the assessment of a civil penalty for a violation of the Change in Bank Control Act, 12 U.S.C. 1817(j). A civil money penalty for a violation of that statute may be assessed in accordance with the procedures set forth in 12 U.S.C. 1817(j)(15).

§ 263.23 Notice of assessment of civil penalty.

Civil penalty proceedings commence with the issuance by the Board of a notice of assessment of civil penalty. The notice of assessment shall state:

(a) The legal authority for the assessment;

(b) The amount of the civil penalty being assessed;

(c) The date by which the civil penalty shall be paid;

(d) The matters of fact or law constituting the grounds for assessment of the civil penalty;

(e) The right of the person being assessed to a formal hearing to challenge the assessment; and

(f) The time limit to request such a formal hearing. The notice of assessment may be served upon the person being assessed by personal service, by registered or certified mail to the person's last known address, or by other appropriate means. Such service constitutes issuance of the notice.

§ 263.24 Opportunity for informal proceeding.

In the sole discretion of the Board's General Counsel, the General Counsel may, prior to the issuance by the Board of a notice of assessment of civil penalty, advise the affected person that the issuance of a notice of assessment of civil penalty is being considered and the reasons and authority for the proposed assessment. The General Counsel may provide the person an opportunity to present written materials or request a conference with members of the Board's staff to show that the penalty should not be assessed or, if assessed, should be reduced in amount.

§ 263.25 Relevant considerations for assessment of civil penalty.

In determining the amount of the penalty to be assessed, the Board will take into account the appropriateness of the penalty with respect to the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations, the economic benefit derived by the person from the violation, and such other matters as justice may require.

§ 263.26 Request for formal hearing on assessment.

A person being assessed may request a formal hearing to challenge the assessment of a civil penalty. The request must be made within ten business days after issuance of the notice of assessment, and any such request must be filed in writing with the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. If a request for a formal hearing is not filed within this ten-day period, the person being assessed shall be deemed to have waived the right to a formal hearing, and the notice of assessment shall constitute a final and unappealable assessment order.

§ 263.27 Hearing order on assessment.

After the receipt of a timely request for a hearing with respect to the assessment of a civil penalty, the Secretary will promptly issue an order directing a hearing to commence within 30 days from the date of the hearing order at such place as the Secretary may designate with due regard for the interests of all parties. The hearing order may require the person requesting the hearing to file an answer as prescribed in § 263.5 of Subpart A. The procedures of the Administrative Procedure Act (5 U.S.C. 554-557) and Subpart A of these Rules shall apply to the hearing.

§ 263.28 Assessment order.

(a) In the event of consent of the parties concerned to an assessment, or if, upon the record made at a hearing ordered under this subpart, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue an order of assessment of civil penalty. In its order, the Board may reduce the amount of the penalty specified in the notice of assessment. Any party afforded a hearing under this subpart who does not appear at the hearing (personally or by a duly authorized representative) shall be considered to have waived the right to a formal hearing and to have consented to the assessment of the civil penalty specified in the notice of assessment.

(b) An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(c) An assessment order may be served by personal service, by registered or certified mail to the last known address of the person being assessed, or by other appropriate means.

§ 263.29 Payment of civil penalty.

(a) The date designated in the notice of assessment for payment of the civil penalty will normally be 60 days from the issuance of the notice. If, however, the Board finds, in a specific case, that the purposes of the authorizing statute would be better served if the 60 day period is changed, the Board may shorten or lengthen the period or make the civil penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of civil penalty is filed, payment of the penalty shall not be required unless and until the board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date by which the civil penalty should be paid or collected.

(b) Checks in payment of civil penalties should be made payable to the "Board of Governors of the Federal Reserve System." Upon collection, the board shall forward the amount of the penalty to the Treasury of the United States.

Subpart C—Rules and Procedures Applicable to Suspension or Removal of a Bank Official Where a Felony is Charged or Proven

SOURCE: 44 FR 56690, Oct. 2, 1979, unless otherwise noted.

§ 263.30 Purpose and scope.

The rules and procedures set forth in this subpart apply to informal hearings afforded to any officer, director, or other person participating in the conduct of the affairs of a State member bank ("bank official"), who has been suspended or removed from office or prohibited from further participation in any manner in the conduct of the bank's affairs by a notice or order issued by the Board upon the grounds set forth in section 8(g) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)).

§ 263.31 Notice or order of suspension, removal, or prohibition.

(a) *Grounds.* The Board may suspend a bank official from office or prohibit a bank official from further participation in any manner in the conduct of a bank's affairs when the person is charged in any information, indictment, or complaint authorized by a United States attorney with the commission of, or participation in, a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law. The Board may remove a bank official from office or prohibit a bank official from further participation in any manner in the conduct of a bank's affairs when the person is convicted of such an offense and the conviction is not subject to further direct appellate review. The Board may suspend or remove a bank official or prohibit a bank official from participation in a bank's affairs in these circumstances if the Board finds that continued service to the bank or participation in its affairs by the bank official may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank.

(b) *Contents.* The Board commences a suspension, removal, or prohibition action with the issuance, and service upon a bank official, of a notice of suspension from office, or order of removal from office, or notice or order of prohibition from participation in the bank's affairs. Such a notice or order shall indicate the basis for the suspension, removal, or prohibition and shall inform the bank official of the right to request in writing, within 30 days of service of the notice or order, an opportunity to show at an informal hearing that continued service to, or participation in the conduct of the affairs of, the bank does not and is not likely to pose a threat to the interests of the bank's depositors or threaten to impair public confidence in the bank. A notice of suspension or prohibition shall remain in effect until the criminal charge upon which the notice is based is finally disposed of or until the notice is terminated by the Board.

(c) *Service.* The notice or order shall be served upon the bank concerned, whereupon the bank official shall immediately cease service to the bank or further participation in any manner in the conduct of the affairs of the bank. A notice or order of suspension, removal, or prohibition may be served by personal service, by registered or certified mail to the last known address of the person being served, or by other appropriate means.

§ 263.32 Request for informal hearing.

A bank official who is suspended or removed from office or prohibited from participation in the bank's affairs may request an informal hearing. The request shall be filed in writing with the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall state with particularity the relief desired and the grounds therefor and shall include, when available, supporting evidence. If the bank official desires to present oral testimony or witnesses at the hearing, the bank official must include a request to do so with the request for informal hearing. The request to present oral testimony or witnesses should specify the names of the witnesses and the general nature of their expected testimony.

§ 263.33 Order for informal hearing.

(a) *Issuance of hearing order.* Upon receipt of a timely request for an informal hearing, the Secretary will promptly issue an order directing an informal hearing to commence within 30 days of the receipt of the request. At the request of the bank official, the Secretary may order the hearing to commence at a time more than 30 days after the receipt of the request for hearing. The hearing shall be held in Washington, D.C., or at such other place as may be designated by the Secretary, before presiding officers designated by the Secretary to conduct the hearing. The presiding officers normally will include representatives from the Board's Legal Division and Banking Supervision and Regulation Division and from the appropriate Federal Reserve Bank.

(b) *Waiver of oral hearing.* A bank official may waive in writing the official's right to an oral hearing and instead elect to have the matter determined by the Board solely on the basis of written submissions.

(c) *Hearing procedures.* (1) The bank official may appear at the hearing personally, through counsel, or personally with counsel. The bank official shall have the right to introduce relevant written materials and to present an oral argument. The bank official may introduce oral testimony and present witnesses only if expressly authorized by the Board or the Secretary. Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554-557) or Subpart A of these Rules shall apply to the informal hearing ordered under this subpart unless the Board orders that they apply.

(2) The proceedings shall be recorded and a transcript shall be furnished to the bank official upon request and after the payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officers. The presiding officers may ask questions of any witness.

(3) The presiding officers may order the record to be kept open for a reasonable period following the hearing (normally 5 business days), during which time additional submissions to the record may be made. Thereafter, the record shall be closed.

(d) *Authority of presiding officers.* In the course of or in connection with any proceeding under this subpart, the Board or the presiding officers are authorized to administer oaths and affirmations, to take or cause to be taken depositions, to issue, revoke, quash, or modify subpenas and subpenas duces tecum, and, for the enforcement thereof, to apply to an appropriate United States district court. All action relating to depositions and subpenas shall be in accordance with the rules provided in §§ 263.7 and 263.8 of Subpart A of these Rules.

(e) *Recommendation of presiding officers.* The presiding officers shall make a recommendation to the Board concerning the notice or order of suspension, removal, or prohibition within 20 calendar days following the close of the record on the hearing.

§ 263.34 Decision of the Board.

(a) Within 60 calendar days following the close of the record on the hearing, or receipt of written submissions where a hearing has been waived, the Board shall notify the bank official whether the notice of suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. The notification shall contain a statement of the basis for any adverse decision by the Board. In the case of a decision favorable to the bank official, the Board shall take prompt action to rescind or otherwise modify the order of suspension, removal or prohibition.

(b) In deciding the question of suspension, removal, or prohibition under this subpart, the Board will not rule on the question of the guilt or innocence of the individual with respect to the crime with which the individual has been charged.

Subpart D—Procedures for Issuance and Enforcement of Directives To Maintain Adequate Capital

AUTHORITY: International Lending Supervision Act of 1983 ("ILSA"), 12 U.S.C. 3907; sec. 5(b), Bank Holding Company Act ("BHC Act"), 12 U.S.C. 1844(b); Financial Institutions Supervisory Act of 1966 ("FIS Act"), 12 U.S.C. 1818(b)-(n); and secs.9 and 11(i), Federal Reserve Act, 12 U.S.C. 248, 324, 329.

SOURCE:50 FR 16069, Apr.24, 1985, unless otherwise noted.

§ 263.35 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued under authority of the International Lending Supervision Act of 1983 ("ILSA"), 12 U.S.C 3907, 3909; section 5(b) of the Bank Holding Company Act ("BHC Act"), 12 U.S.C. 1844(b); the Financial Institutions Supervisory Act of 1966 ("FIS Act"), 12 U.S.C. 1818(b)-(n); and sections 9 and 11(i) of the Federal Reserve Act, 12 U.S.C. 248, 324, 329.

(b) *Purpose and scope.* This subpart establishes procedures under which the Board may issue a directive or take other action to require a state member bank or a bank holding company to achieve and maintain adequate capital. The information collection requirement contained in this requlation has been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and has been assigned OMB No. 7100-0209.

§ 263.36 Definitions.

(a) "Bank holding company" means any company that controls a bank as defined in section 2 of the BHC Act, 12 U.S.C. 1841, and in the Board's Regulation Y (12 CFR 225.2(b)) or any direct or indirect subsidiary thereof other than a bank subsidiary as defined in section 2(c) of the BHC Act, 12 U.S.C. 1841(c), and in the Board's Regulation Y (12 CFR 225.2(a)).

(b) "Capital Adequacy Guidelines" means those guidelines for bank holding companies and state member banks contained in Appendix A to the Board's Regulation Y (12 CFR Part 225).

(c) "Directive" means a final order issued by the Board pursuant to ILSA (12 U.S.C. 3907(b)(2)) requiring a state member bank or bank holding company to increase capital to or maintain capital at the minimum level set forth in the Board's Capital Adequacy Guidelines or as otherwise established under procedures described in §263.40 of this subpart.

(d) "State member bank" means any state-chartered bank that is a member of the Federal Reserve System.

§ 263.37 Establishment of minimum capital levels.

The Board has established minimum capital levels for state member banks and bank holding companies in its Capital Adequacy Guidelines. The Board may set higher capital levels as necessary and appropriate for a particular state member bank or bank holding company based upon its financial condition, managerial resources, prospects, or similar factors, pursuant to the procedures set forth in §263.40 of this subpart.

§ 263.38 Procedures for requiring maintenance of adequate capital.

(a) *Submission of capital improvement plan.* Any state member bank or bank holding company that may not be in compliance with the Board's Capital Adequacy Guidelines on the date that this regulation becomes effective shall, within 90 days, submit to its appropriate Federal Reserve Bank for review a plan describing the means and the time schedule by which the bank or bank holding company shall achieve the required minimum level of capital.

(b) *Issuance of directive—(1) Notice of intent to issue directive.* If a state member bank or bank holding company is operating with less than the minimum level of capital established in the Board's Capital Adequacy Guidelines, or as otherwise established under the procedures described in § 263.40 of this subpart, the Board may issue and serve upon such state member bank or bank holding company written notice of the Board's intent to issue a directive to require the bank or bank holding company to achieve and maintain adequate capital within a specified time period.

(2) *Contents of notice.* The notice of intent to issue a directive shall include:

(i) The required minimum level of capital to be achieved or maintained by the institution;

(ii) Its current level of capital;

(iii) The proposed increase in capital needed to meet the minimum requirements;

(iv) The proposed date or schedule for meeting these minimum requirements;

(v) When deemed appropriate, specific details of a proposed plan for meeting the minimum capital requirements; and

(vi) The date for a written response by the bank or bank holding company to the proposed directive, which shall be at least 14 days from the date of issuance of the notice unless the Board determines a shorter period is necessary because of the financial condition of the bank or bank holding company.

(3) *Response to notice.* The bank or bank holding company may file a written response to the notice within the time period set by the Board. The response may include:

(i) An explanation why a directive should not be issued;

(ii) Any proposed modification of the terms of the directive;

(iii) Any relevant information, mitigating circumstances, documentation or other evidence in support of the institution's position regarding the proposed directive; and

(iv) The institution's plan for attaining the required level of capital.

(4) *Failure to file response.* Failure by the bank or bank holding company to file a written response to the notice of intent to issue a directive within the specified time period shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of such directive.

(5) *Board consideration of response.* After considering the response of the bank or bank holding company, the Board may:

(i) Issue the directive as originally proposed or in modified form;

(ii) Determine not to issue a directive and so notify the bank or bank holding company; or

(iii) Seek additional information or clarification of the response by the bank or bank holding company.

(6) *Contents of directive.* Any directive issued by the Board may order the bank or bank holding company to:

(i) Achieve or maintain the minimum capital requirement established pursuant to the Board's Capital Adequacy Guidelines or the procedures in § 263.40 of this subpart by a certain date;

(ii) Adhere to a previously submitted plan or submit for approval and adhere to a plan for achieving the minimum capital requirement by a certain date;

(iii) Take other specific action as the Board directs to achieve the minimum capital levels, including requiring a reduction of assets or asset growth or restriction on the payment of dividends; or

(iv) A combination of the above actions.

(7) *Request for reconsideration of directive.* Any state member bank or bank holding company, upon a change in circumstances, may request the Board to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the required minimum capital level. The directive and plan continue in effect while such request is pending before the Board.

§ 263.39 Enforcement of directive.

(a) *Judicial and administrative remedies.* (1) Whenever a bank or bank holding company fails to follow a directive issued under this subpart, or to submit or adhere to a capital adequacy plan as required by such directive, the Board may seek enforcement of the directive, including the capital adequacy plan, in the appropriate United State district court, pursuant to section 908 (b)(2)(B)(ii) of ILSA (12 U.S.C. 3907(b)(2)(B)(ii) and to section 8(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)), in the same manner and to the same extent as if the directive were a final cease and desist order.

(2) The Board, pursuant to section 910(d) of ILSA (12 U.S.C. 3909(d)), may also assess civil money penalties

for violation of the directive against any bank or bank holding company and any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank or bank holding company, in the same manner and to the same extent as if the directive were a final cease and desist order.

(b) *Other enforcement actions.* A directive may be issued separately, in conjunction with, or in addition to any other enforcement actions available to the Board, including issuance of cease and desist orders, the approval or denial of applications or notices, or any other actions authorized by law.

(c) *Consideration in application proceedings.* In acting upon any application or notice submitted to the Board pursuant to any statute administered by the Board, the Board may consider the progress of a state member bank or bank holding company or any subsidiary thereof in adhering to any directive or capital adequacy plan required by the Board pursuant to this subpart, or by any other appropriate banking supervisory agency pursuant to ILSA. The Board shall consider whether approval or a notice of intent not to disapprove would divert earnings, diminish capital, or otherwise impede the bank or bank holding company in achieving its required minimum capital level or complying with its capital adequacy plan.

§ 263.40 Establishment of increased capital level for individual bank or bank holding company.

(a) *Establishment of capital levels for individual institutions.* The Board may establish a capital level higher than that specified in the Board's Capital Adequacy Guidelines for an individual bank or bank holding company pursuant to:

(1) A written agreement or memorandum of understanding between the Board or the appropriate Federal Reserve Bank and the bank or bank holding company;

(2) A temporary or final cease and desist order issued pursuant to section 8(b) or (c) of the FIS Act (12 U.S.C. 1818(b) or (c));

(3) A condition for approval of an application or issuance of a notice of intent not to disapprove a proposal;

(4) Or other similar means; or

(5) The procedures set forth in subsection (b) of this section.

(b) *Procedure to establish higher capital requirement*—(1) *Notice.* When the Board determines that capital levels above those in the Board's Capital Adequacy Guidelines may be necessary and appropriate for a particular bank or bank holding company under the circumstances, the Board shall give the bank or bank holding company notice of the proposed higher capital requirement and shall permit the bank or bank holding company an opportunity to comment upon the proposed capital level, whether it should be required and, if so, under what time schedule. The notice shall contain the Board's reasons for proposing a higher level of capital.

(2) *Response.* The bank or bank holding company shall be allowed at least 14 days to respond, unless the Board determines that a shorter period is necessary because of the financial condition of the bank or bank holding company. Failure by the bank or bank holding company to file a written response to the notice within the time set by the Board shall constitute a waiver of the opportunity to respond and shall constitute consent to issuance of a directive containing the required minimum capital level.

(3) *Board decision.* After considering the response of the institution, the Board may issue a written directive to the bank or bank holding company setting an appropriate capital level and the date on which this capital level will become effective. The Board may require the bank or bank holding company to submit and adhere to a plan for achieving such higher captial level as the Board may set.

(4) *Enforcement of higher capital level.* The Board may enforce the capital level established pursuant to the procedures described in this section and any plan submitted to achieve that capital level through the procedures set forth in § 263.39 of this subpart.

PART 264—EMPLOYEE RESPONSIBILITIES AND CONDUCT

REGULATIONS

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APPENDIX A

AUTHORITY: E.O. 11222, 3 CFR, 1964-1965 Comp.; 5 CFR 735.104.

SOURCE: 33 FR 8655, June 13, 1968, unless otherwise noted.

REGULATIONS

§ 264.735-1 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by employees and special employees of the Board is essential to assure the proper performance of Board business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of employees and special employees of the Board through use of informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part prescribes standards of conduct and responsibilities, and governs statements reporting employment and financial interests of the Board's employees and special employees of the Board.

§ 264.735-2 Definitions.

For the purposes of this part, including all forms promulgated for use herewith, unless the context requires otherwise:

(a) "Board" means Board of Governors of the Federal Reserve System.

(b) "Employee" means an officer or employee of the Board but does not include a special employee.

(c) "Special Government employee" (herein referred to as special employee) means an officer or employee of the Board who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(d) "Conflict or apparent conflict of interest" means a conflict or the appearance of a conflict between the interests of an employee or special employee and the performance of his services for the Board.

§ 264.735-3 Effective date, distribution, and counseling.

(a) This part and any amendment thereto shall be effective upon publication in the FEDERAL REGISTER.

(b) The Division of Personnel Administration shall distribute a comprehensive summary of this part to every employee and every special employee within 90 days after the effective date, and to each new employee and special employee at the time of entrance on duty, and distribute to every employee and every special employee each calendar year thereafter a reminder of the basic provisions of this part. A copy of this part shall be made available, upon request, to every employee and special employee by the Division of Personnel Administration, or by the Counselor or any Deputy Counselor.

(c) A Counselor and Deputy Counselors, appointed by the Board, shall be available for counseling and guidance respecting statutes and regulations affecting employee responsibility and conduct, including interpretations of the provisions of this part, and each employee and special employee shall be notified of this service by the Division of Personnel Administration at the time he receives a comprehensive summary of this part.

§ 264.735-4 Financial statements.

(a) Each employee required to do so by § 264.735-8(a) shall complete and file Form FR 264.A in accordance with § 264.735-8. Each special employee shall complete and file Form FR 264.B in accordance with § 264.735-8.

(b) All Forms FR 264.A and FR 264.B shall be received and reviewed by the Director of the Division of Personnel Administration or his designated representative to determine whether there are any conflicts or apparent conflicts of interest or other violations of this part, law, or other regulations. The Director shall be responsible for maintaining all completed forms in confidence pursuant to paragraph (c) of this section and shall not allow access to, or allow information to be disclosed from, a form—except to carry out the purpose of this part. Information obtained from other sources shall be treated as if it was contained in the forms.

(c) All reports, forms, papers, and the information contained therein, filed pursuant to this section shall be confidential, except as the Board or the Civil Service Commission may determine for good cause shown.

§ 264.735-5 Disciplinary or remedial action.

In addition to any action that may be taken, or penalty imposed, for violations of this part, as prescribed by law:

(a) When conflicts or apparent conflicts of interest or other violations or apparent violations of this part cannot be resolved or explained to the satisfaction of the Director of Personnel Administration, he shall report the matter to the Board through the Counselor.

(b) The employee or special employee concerned shall be given an opportunity to explain such conflicts or apparent conflicts of interest before and after the matter is reported to the Board.

(c) The Board, after consideration of the matter, and after an opportunity for the employee or special employee concerned to appear, shall decide what steps are to be taken to remedy the situation. Among other steps, the Board may:

(1) Attempt to remove any conflict of interest by requiring a change in duties, disqualification for a particular assignment, or divestment of the conflicting interest by the employee or special employee;

(2) Take other corrective action; or

(3) Where corrective actions are inadequate, impose disciplinary action. Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

§ 264.735-6 Ethical and other conduct and responsibilities of employees.

(a) An employee shall avoid any action, whether or not specifically prohibited by this section, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Board efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Board decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Board and the Government.

(b) *Gifts, entertainment, favors, and loans.* (1) Except as provided in paragraph (b)(2) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(i) Has or is seeking to obtain contractual or other business or financial relations with the Board;

(ii) Conducts operations or activities that are regulated by the Board; or

(iii) Has interests that may be substantially affected by the performance or nonperformance of his official duty.

(2) Paragraph (b)(1) of this section shall not apply to the following activities that are necessary to, or compatible with the duties and responsibilities of, the Board and its employees:

(i) The acceptance of loans from, or other financial relations with, banks or other financial institutions, in the ordinary course of business of the bank or other financial institution and the employee, governed by terms no more favorable than would be available in like circumstances to persons who are not employees of the Board, except as provided by law or regulation;

(ii) Obvious family or personal relationships (such as those between the parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned that are the motivating factors;

(iii) The acceptance of food, refreshments, or accompanying entertainment in the ordinary course of a luncheon or dinner meeting or other function or inspection tour where an employee is properly in attendance;

(iv) The acceptance of lodging on unusual occasions if an employee is properly in attendance and the circumstances thereof are reported to the Board, or if covered by paragraph (c)(4) of this section; or

(v) The acceptance of unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(3) An employee shall not solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself. An employee shall not make a donation as a gift to an employee in a superior official position. However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(4) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and other law.

(5) Neither this paragraph nor paragraph (c) of this section precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, an employee may not be reimbursed, and payment may not be made on his behalf, for excessive personal living expenses or other personal benefits.

(c) *Outside employment and other activity.* (1) An employee shall not engaged in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Board employment. Incompatible activities include but are not limited to:

(i) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value, in circumstances in which acceptance may result in, or create the appearance of, (*a*) conflicts of interest or (*b*) the use of nonpublic information gained through, or incidental to, his Board duties, except as provided in this part;

(ii) Outside employment which tends to impair his mental or physical capacity to perform his Board duties and responsibilities in an acceptable manner; or

(iii) Outside business and teaching employment not approved by the Board and reported on Form FR 725.

(2) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Board.

(3) Employees are encouraged to engage in teaching, lecturing, speaking, and writing relating to the Board's functions and responsibilities that is not prohibited by law, Executive Order 11222 or this part. However, an employee shall not, either for or without compensation, engage in such activities including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that are dependent on information obtained as a result of his Board employment, except when that information has been made available to the general public or will be made available on request, or when the Board gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. In any case, before any employee engages in such activities, he shall consult his Division Head for the appropriate procedure to obtain official approval.

(4) This paragraph does not preclude an employee from:

(i) Participation in the activities of national or State political parties not prohibited by law; or

(ii) Participation in the affairs of, or acceptance of an award for a meritorious public contribution or achievement given by, a charitable, religious, professional, social, fraternal, nonprofit educational, and recreational, public service, or civic organization.

(d) *Financial interest.* (1) An employee shall not:

(i) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his duties and responsibilities with the Board;

(ii) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his employment with the Board;

(iii) Engage in speculative dealings (as distinguished from investments), whether on a margin or a cash basis, and whether in securities, commodities, real estate, exchange, or otherwise. Frequency of trading, the use of credit, and particularly transactions to take advantage of short-term price fluctuations, would be significant indications that dealings were speculative; or

(iv) Purchase equity securities of a bank, an affiliate thereof, or a Government security dealer; and an employee holding or acquiring such securities shall dispose of them as promptly as is practicable without causing undue hardship unless, after full disclosure in writing, the Board approves continued holding of such securities.

(2) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Board so long as it is not prohibited by law, Executive Order 11222, applicable regulation, or this part, including indebtedness to banks or other financial institutions on the same terms and conditions available to the employee if he were not an employee of the Board.

(e) *Use of Board property.* An employee shall not directly or indirectly use, or allow the use of, Board property of any kind, including property leased to the Board, for other than officially approved activities; an employee has a positive duty to protect and conserve Board property, including equipment, supplies, and other property entrusted or issued to him.

(f) *Misuse of information.* For the purpose of furthering a private interest, an employee shall not, except as provided in paragraph (c)(3) of this section, directly or indirectly use, or allow the use of, official information obtained through or in connection with his Board employment which has not been made available to the general public.

(g) *Disclosure of unpublished information.* An employee of the Board shall not disclose to any person any unpublished information of the Board obtained in the course of his work except as authorized by the Board's Rules Regarding Information, Submittals, and Requests (§ 261.2 of this chapter).

(h) *Indebtedness.* An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the Board determines does not, under the circumstances, reflect adversely on the Board as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Board to determine the validity or amount of the disputed debt.

(i) *Gambling, betting, and lotteries.* An employee shall not participate, while on Board-owned or leased property or while on duty for the Board, in any gambling activity including the operating of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

(j) *General conduct prejudicial to the Government.* An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government or the Board.

(k) *Miscellaneous statutory provisions.* Each employee shall acquaint himself with each statute that relates to his ethical and other conduct while an employee of the Board. In particular, the following statutes shall be noted:

(1) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service".

(2) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest. (In particular, 18 U.S.C. 212 and 213, prohibiting the offer to a bank examiner, or the acceptance by a bank examiner, of a gratuity or a loan from certain banks; $5,000 fine and/or 1 year in prison.)

(3) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913) ($500 fine and/or 1 year in prison and removal from employment).

(4) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918) ($1,000 fine and/or 1 year and 1 day in prison).

(5) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(6) The prohibition against (i) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783) ($10,000 fine and/or 10 years in prison); and (ii) the disclosure of confidential information (18 U.S.C. 1905) ($1,000 fine and/or 1 year in prison, and removal from employment).

(7) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352) (ineligibility for employment in the competitive service).

(8) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)) (suspension from duty or removal from employment).

(9) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719) ($300 fine).

(10) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917) ($1,000 fine and/or 1 year in prison).

(11) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001) ($10,000 fine and/or 5 years in prision).

(12) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071) ($2,000 fine and/or 3 years in prison).

(13) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508) ($5,000 fine and/or 10 years in prison).

(14) The prohibitions against (i) embezzlement of Government money or property (18 U.S.C. 641); (ii) failing to account for public money (18 U.S.C. 643); and (iii) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654) (fines from $1,000 to $10,000 and/or 1 to 10 years in prison).

(15) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285) ($5,000 fine and/or 5 years in prison).

(16) The prohibition against proscribed political activities—the Hatch Act (5 U.S.C. 7321-7327) (possible removal from employment) and 18 U.S.C. 602, 603, 607, and 608 (fines of $5,000 and/or 5 years in prison).

(17) The prohibition against disclosure of certain information by a bank examiner (18 U.S.C. 1906) ($5,000 fine and/or 1 year in prison).

(18) The prohibition against an employee acting as the agent of a foreign principal registered under the foreign Agents Registration Act (18 U.S.C. 219) ($10,000 fine and/or 2 years in prison).

§ 264.735-7 Ethical and other conduct and responsibilities of special employees.

(a) *Use of Board employment.* A special employee shall not use his Board employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) *Use of inside information.* A special employee shall not use inside information obtained as a result of his Board employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this paragraph, "inside information" means information obtained under Board authority which has not become part of the body of public information. However, a special employee may teach, lecture, or write in a manner not inconsistent with the appropriate provisions of § 264.735-6(c) in regard to employees.

(c) *Coercion.* A special employee shall not use his Board employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

(d) *Gifts, entertainment, and favors.* (1) Except as provided in paragraph (d)(2) of this section, a special employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with the Board anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person particularly one with whom he has family, business, or financial ties.

(2) Paragraph (d)(1) of this section shall not apply to the activities referred to in § 264.735-6(b)(2) which are necessary to, and compatible with the duties and responsibilities of, the Board and its special employees.

(e) *Miscellaneous statutory provisions.* Each special employee shall acquaint himself with each statute that relates to his ethical and other conduct while a special employee. In particular, the statutes listed in § 264.735-6(k) shall be noted.

(f) *Other provisions applicable to special employees.* Paragraphs (e), (g), (h), and (j) of § 264.735-6 shall be applicable to special employees.

§ 264.735-8 Statements of employment and financial interests.

(a) *Employees required to submit statements.* Except as provided in paragraph (b) of this section, statements of employment and financial interests shall be filed by:

(1) Employees receiving compensation equivalent to GS-13 or above whose positions are identified in Appendix A to this part by reason of meeting the following criteria:

(i) Positions the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

(A) Contracting or procurement;

(B) Administering or monitoring grants or subsidies;

(C) Regulating or auditing private or other non-Federal enterprise; or

(D) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

(ii) Positions which the Board determines require the incumbent to report employment and financial interests in order to carry out the purpose of law, executive order, this part, and the Board's regulations.

(2) Employees receiving compensation below the equivalent to GS-13 whose positions otherwise meet the criteria in paragraph of (a)(1) of this section when the inclusion of the positions in Appendix A has been specifically justified by the Board in writing to the Civil Service Commission as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflict-of-interest situation.

(b) *Employees not required to submit statements.* Neither Form FR 264.A nor Form FR 264.B is required by this section from a member of the Board of Governors. Board members are subject to separate reporting requirements under section 401 of Executive Order 11222.

(c) *Time and place for submission of employees' statements.* An employee required to submit a Form FR 264.A under this part shall submit that form to the Director of the Division of Personnel Administration or his designated representative not later than:

(1) Ninety days after the effective date of this part if employed on or before the effective date; or

(2) Thirty days after his entrance on duty. However, this subparagraph does not require a submission earlier than 90 days after the effective date of this part.

(d) *Supplementary statements.* Changes in, or additions to, the information contained in an employee's Form FR 264.A shall be reported in a supplementary statement as of June

30. If no changes or additions occur, a negative report is required. Notwithstanding the filing of an annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of 18 U.S.C. 203 or § 264.735-6. Supplementary reports shall be filed on Form FR 264.A, indicating the year for which the report is filed in Part I of the Form.

(e) *Interests of employees' relatives.* The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

(f) *Information not known by employees.* If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that person to submit information in his behalf.

(g) *Information prohibited.* This section does not require an employee to submit a statement of employment and financial interests or supplementary statement of any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or similar organization not conducted as a business enterprise. For the purpose of this paragraph, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Board are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

(h) *Effect of employees' statements on other requirements.* The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

(i) *Employee's complaint on filing requirement.* An employee may complain through the Board's grievance procedure that his position has been improperly included in this part as one requiring the submission of a Form FR 264.A.

(j) *Specific provisions of Board regulations for special employees.* (1) Except as provided in paragraph (j)(2) of this section, each special employee shall submit on Form FR 264.B a statement of employment and financial interests which reports:

(i) All other employment; and

(ii) The financial interests of the special employee which the Board determines are relevant in the light of the duties he is to perform.

(2) The Board may waive the requirement in paragraph (j)(1) of this section for the submission of a statement of employment and financial interests in the case of a special employee who is not a consultant or an expert when the Board finds that the duties of the position held by that special employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Board and the Government. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients.

(3) The statement of employment and financial interests required to be submitted under this paragraph shall be submitted in accordance with the provisions of paragraphs (c) and (d) of this section (however, supplemental information shall be filed on Form FR 264.B). The provisions of paragraphs (e), (f), (g), and (h) of this section shall apply to statements of employ-

ment and financial interests of special employees where appropriate.

APPENDIX A

GENERAL

Each Head, Associate, Deputy, or Assistant Head of a Division or Office of the Board (regardless of specific title), Research Officer or Assistant to the Board.

DIVISION OF INTERNATIONAL FINANCE

Assistant to the Director.
Chief, Trade and Financial Studies Section.
Chief, International Banking Section.
Chief, U.S. International Transactions Section.
Chief, Financial Markets Section.
Economist, Financial Markets Section.[1]
Chief, World Payments and Economic Activity Section.
Chief, Quantitative Studies Section.
Chief, International Development Section.

DIVISION OF BANKING SUPERVISION AND REGULATION

Chief, Banking Activities, Bank Holding Companies Section.
Chief, Nonbanking Activities, Bank Holding Companies Section.
Review Examiner, Bank Holding Companies Section.[1]
Chief, Financial Institutions Supervisory Section.
Senior Attorney, Financial Institutions Supervisory Section.
Senior Staff Assistant, Financial Institutions Supervisory Section.
Chief, Trust Activities Section.
Trust Review Examiner, Trust Activities Section.
Chief, Bank Holding Company Analysis Section.
Financial Analyst, Bank Holding Company Analysis Section.[1]
Senior Attorney, Securities Credit Regulation.
Chief Attorney, Securities Credit Regulation.
Accountant Analyst, State Bank Securities/Accounting Section.
Foreign Banking Analyst, Foreign Banking Section.[1]
Supervisory Examiner, Foreign Banking Section.

DIVISION OF ADMINISTRATION SERVICES

Program Analyst/Construction.
Chief of Planning.
Chief of Procurement.

OFFICE OF THE CONTROLLER

Chief, Finance and Accounting Section.

DIVISION OF CONSUMER AFFAIRS

Chief, Fair Credit Practices Section.
Chief, Equal Credit Opportunity Section.
Chief, Compliance Section.
Senior Attorney.

DIVISION OF RESEARCH AND STATISTICS

Chief, Banking Section.
Economist, Banking Section.[1]
Chief, Capital Markets Section.
Economist, Capital Markets Section.[1]
Chief, Government Finance Section.
Economist, Government Finance Section.[1]
Chief, Mortgage and Consumer Finance Section.
Chief, Financial Structure Section.
Economist, Financial Structure Section.[1]
Chief, Econometric and Computer Applications Section.
Economist, Econometric and Computer Applications Section.[1]
Chief, National Income Section.
Chief, Wages, Prices and Productivity Section.
Chief, Business Conditions Section.
Chief, Financial Studies Section.
Chief, Special Studies Section.
Chief, Flow of Funds Section.

DIVISION OF FEDERAL RESERVE BANK EXAMINATIONS AND BUDGETS

Manager, Financial Examinations Section.
Senior Financial Examiner.[1]

DIVISION OF FEDERAL RESERVE BANK OPERATIONS

Architect, Building Planning Section.
Manager, Lending, Credit and Cash Services.
Manager, Payments Mechanism Section.
Program Manager for EFTS Operations.
Program Manager, EFTS Planning.

LEGAL DIVISION

Senior Attorney.

OFFICE OF BOARD MEMBERS

Administrative Assistant to the Chairman.
Staff Assistant.
Economist.

OFFICE OF STAFF DIRECTOR FOR MANAGEMENT

Assistant for Program Coordination.

OFFICE OF STAFF DIRECTOR FOR MONETARY POLICY

Economist.
Staff Assistant.

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[1] Grade 13 and above.

[1] Grade 13 and above.

DIVISION OF DATA PROCESSING

Senior Staff Assistant.
Chief, Mathematical/Statistical Section.
Project Analyst/Programmer—Reserves, Mathematical/Statistical Section.
Project Analyst/Programmer—Models, Mathematical/Statistical Section.
Project Analyst/Programmer—Transmissions of Edited Deposit Systems, Mathematical/Statistical Section.
Project Analyst/Programmer—Capital Markets, Mathematical/Statistical Section.
Chief, Bank Holding Company Applications Section.
Chief, Data Production Section.

[33 FR 8655, June 13, 1968, as amended at 42 FR 27876, June 1, 1977]

PART 264a—RESERVE BANK DIRECTORS—ACTIONS AND RESPONSIBILITIES

Sec.
264a.1 Purpose.
264a.2 Definitions.
264a.3 Prohibition against director participation in particular matters.
264a.4 Granting of ad hoc exemptions.
264a.5 Exemption of remote or inconsequential financial interests.

AUTHORITY: 18 U.S.C. 208, as amended by the Federal Reserve Reform Act of 1977, Pub. L. 95-188, sec. 205, 91 Stat. 1387; 12 U.S.C. 248, 301.

SOURCE: 43 FR 24667, June 7, 1978, unless otherwise noted.

§ 264a.1 Purpose.

Directors of Federal Reserve Banks are charged by law with the responsibility of supervising and controlling the operations of the Reserve Banks, under the general supervision of the Board of Governors, and for assuring that the affairs of the Banks are administered fairly and impartially. The Federal Reserve Act provides that Reserve bank directors will be selected with due consideration to the interests of various segments of the population and the economy, thus assuring that the Federal Reserve System will receive the benefit of the experienced judgment of individuals from a broad spectrum of the communities that will be affected by actions of the System. For example, the provisions of section 4 of the Federal Reserve Act, as amended by the Federal Reserve Reform Act of 1977, provide that both class B and C directors shall be chosen to represent the public and with "due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers." Section 4 further provides that class A directors "shall be chosen by and be representative of the stockholding banks" of the Federal Reserve System. Recognizing that Reserve Bank directors may have, in their private capacities, business, consumer, or other interests to which legitimate attention is to be given; but recognizing also that these same individuals have fiduciary responsibilities as directors of Reserve Banks, this regulation is promulgated for the purpose of assuring preservation of and adherence to the intent of both the Federal Reserve Act and section 208 of Title 18, United States Code.

§ 264a.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) The term "director," unless otherwise indicated, means a head office or branch director of a Federal Reserve Bank.

(b) The term "Board of Governors" means the Board of Governors of the Federal Reserve System.

(c) The term "board" means the board of directors of a Federal Reserve Bank or branch of a Federal Reserve Bank.

(d) The term "related person" means (1) a partner of a director, (2) any organization in which the director is serving as an officer, director, trustee, partner or employee, or (3) any person or organization with whom the director is negotiating or has any arrangement concerning prospective employment.

(e) The term "participate" means to act through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or as is otherwise within the meaning of the provisions of 18 U.S.C. 208.

(f) The term "particular matter" means a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other subject within the meaning of the provisions of 18 U.S.C. 208.

(g) The term "discussions" means the consideration of a matter by a board and may include, depending upon the board's statutory authority, votes taken or other decisional action.

§ 264a.3 Prohibition against director participation in particular matters.

(a) Pursuant to the provisions of 18 U.S.C. 208(a), no director may participate personally and substantially in a particular matter in which, to the director's knowledge, the director, the director's spouse or minor child, or related persons have a financial interest unless such action is otherwise permitted by 18 U.S.C. 208(b) and § 264a.4 or § 264a.5 of this part.

(b) Except as provided by 18 U.S.C. 208(b) and § 264a.4 or § 264a.5 of this part, no director shall participate in deliberations or decisions of a Reserve Bank board when the question presented is whether the board should approve or ratify an extension of credit, advance, or discount by a Reserve Bank to a bank which is, in the opinion of the President of the Reserve Bank, in a hazardous financial condition, and

(1) Where the director has knowledge that he, his spouse, or minor child has a financial interest in the proposed transaction as a result of:

(i) Being a borrower or applicant for credit from the borrowing bank, other than consumer credit as defined in Regulation Z (12 CFR 226.2(p));

(ii) Maintaining a depositary relationship with the borrowing bank in an amount exceeding that covered by Federal deposit insurance;

(iii) Owning stock, stock options, bonds, notes or other forms of indebtedness issued by the borrowing bank, or its registered parent holding company, the market value of which exceeds $100,000 or represents more than 1 percent of the value of that class of stock, stock option, bond, note, or other form of indebtedness issued by the borrowing bank or its registered parent holding company; or

(iv) Employment in a policy making position or service as a director with the borrowing bank or the registered parent holding company of the borrowing bank.

(2) Where the director has a financial interest in the proposed transaction as a result of:

(i) Service by the director as an officer or director of another bank that is known by the director to be located in the same geographic market for local banking services as the borrowing bank and is known by the director to be in direct and substantial competition with the borrowing bank;

(ii) Service by the director as an officer or director of another bank that is known by the director:

(A) To have outstanding or to be negotiating an extension of credit from, or to, the borrowing bank, other than Federal funds or foreign exchange transactions; or

(B) To maintain a correspondent or depositary relationship with the borrowing bank in an amount exceeding that covered by Federal deposit insurance; or

(iii) Service by the director as one of the principal officers of any business enterprise that constitutes the director's primary business or professional occupation where such business enterprise is known by the director:

(A) To have outstanding or to be negotiating a direct and substantial extension of credit or line of credit from the borrowing bank;

(B) To maintain a principal depositary relationship with the borrowing bank in an amount exceeding that covered by Federal deposit insurance; or

(C) To own stock, stock options, bonds, notes or other forms of indebtedness issued by the borrowing bank, the market value of which exceeds $100,000 or represents more than 1 percent of the value of that class of stock, stock options, bonds, notes or other form of indebtedness issued.

(3) Where the director has knowledge that a partner of the director has a financial interest in the proposed transaction; or

(4) Where the director has a financial interest in the proposed transaction as a result of the director's participation in current negotiations or arrangements concerning prospective employment with the borrowing bank.

(c) It is recognized that a Reserve Bank board can, within the spirit and letter of its responsibilities, delegate to appropriate officials of the Reserve Bank authority to act with respect to extensions of credit to individual banks determined to be in hazardous financial condition, thus avoiding both ratification by the board and applicability to the directors of the prohibitions of this section. Such delegation would not preclude continued advice to the board of appropriate information regarding bank conditions in the district so as to enable the board to perform fully its general oversight responsibilities.

§ 264a.4 Granting of ad hoc exemptions.

(a) The prohibitions of 18 U.S.C. 208 and § 264a.3 of this part shall not apply if the director first advises the Board of Governors of the nature and circumstances of the particular matter before the board and makes full disclosure of the financial interest involved and receives in advance a written determination made by the Board of Governors, or its designee, pursuant to 18 U.S.C. 208(b)(1), that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Federal Reserve System may expect from such director.

(b) Telegraphic communications from the President, First Vice President, Secretary or General Counsel of a Reserve Bank to the Board of Governors on behalf of a director and setting forth the precise nature of both the particular matter before the board and the financial interest involved shall be considered to meet the director's duty of full disclosure set forth in § 264a.4(a). Telegraphic response to the same identified officials of the Reserve Bank by the Board of Governors, or its designee, shall be deemed to meet the requirement of a written determination by the Board of Governors set forth in § 264a.4.

§ 264a.5 Exemption of remote or inconsequential financial interests.

(a) Pursuant to the provisions of 18 U.S.C. 208(b)(2), certain actions of directors of Federal Reserve Banks may be exempted from the prohibitions of 18 U.S.C. 208(a) and § 264a.3 of this part, if by general rule or regulation published in the FEDERAL REGISTER, the financial interest involved has been determined to be too remote or too inconsequential to affect the integrity of directors' services. Financial interests will be viewed as too remote or too inconsequential:

(1) In circumstances in which a director's action on a matter will not directly, substantially, and predictably affect the financial interest; or

(2) In circumstances in which a director's independence of judgment will not be affected by the financial interest.

(b) The Board of Governors has determined that the financial interests of a director, the director's spouse or minor child, or related persons in the following matters are too remote or too inconsequential to affect the integrity of directors' services and, accordingly, the prohibitions of 18 U.S.C. 208(a) and § 264a.3 of this part shall not apply to a director's participation in such matters:

(1) Deliberations concerning or ratification of extensions of credit, advances, or discounts to any bank that has not been determined to be in hazardous financial condition by the President of the Reserve Bank, provided such credit extensions, advances, or discounts are made under appropriate provisions of the Federal Reserve Act, regulations and policies of the Board of Governors and the Federal Reserve Banks, and the established operating procedures at the director's Reserve Bank;

(2) Deliberations concerning or affecting any financial institution, to the extent the financial interest in such matters results from:

(i) Maintenance at the financial institution of a checking or other deposit account covered by Federal Insurance;

(ii) A fiduciary relationship involving the utilization of the financial institution's trust or investment advisory services;

(iii) The receipt from the financial institution of consumer credit, as that term is defined in Regulation Z (12 CFR 226.2(p)); or

(iv) Participation in Federal funds or foreign exchange transactions with the financial institution;

(3) Deliberations concerning or affecting any financial institution or other enterprise to the extent the financial interest results from ownership of stock, stock options, bonds, notes, or other forms of indebtedness, the market value of which is less than $100,000 and represents less than 1 percent of the value of that class of stock, stock option, bond, note or other form of indebtedness issued by the financial institution or other enterprise.

(4) Deliberations concerning or affecting any financial institution or other enterprise to the extent the financial interest results from holdings in a diversified and widely held mutual fund, investment company, pension or retirement plan that, in turn, may have invested in the financial institution, provided that the director does not contribute to investment decisions of the fund, company, or plan.

(c) Section 264a.3(b) of this part specifically identifies certain financial interests, the existence and knowledge of which will preclude a director from participating in deliberations or decisions of a Reserve Bank board (except through recourse to the procedures set forth in § 264a.4) when the question presented is whether the board should approve or ratify an extension of credit, advance, or discount by a Reserve Bank to a bank which is, in the opinion of the President of the Reserve Bank, in hazardous financial condition. Financial interests identified in § 264a.3(b) are viewed by the Board as offering a clear potential for conflict. The Board has determined that any other financial interest that a director, the director's spouse or minor child, or related persons may have in such extensions of credit, advances, or discounts to banks in hazardous condition are too remote or too inconsequential to affect the integrity of directors' services and, accordingly, the prohibitions of 18 U.S.C. 208(a) and § 264a.3 of this part shall not apply to a director's participation in such matters. These would include, for example, financial interests that might result from:

(1) A director's ownership of stock of a bank or business, other than a registered parent holding company of the
borrowing bank, that may have an i
terest in the condition of the borro
ing bank; or

(2) A director's service as a direct
or trustee of a business or other org
nization, other than a bank or the re
istered parent holding company of th
borrowing bank, that may, itself
through a subsidiary, have an intere
in the condition of the borrowi
bank.

(d) The functions of directors oft
include their participation in discu
sions concerning (1) international, n
tional, and regional economic and
nancial conditions, (2) moneta
policy, (3) general conditions, tren
or issues with respect to bank cred
(4) establishment of rates to
charged for all advances and discou
by Federal Reserve Banks, subject
review and determination of the Boa
of Governors pursuant to the Fede
Reserve Act, (5) matters intended
have generally uniform application
banks within the Reserve Bank d
trict, and (6) statutes and proposed
pending legislation in which the F
eral Reserve System has a legitim
interest. The foregoing matters
not particular matters of the type
scribed in 18 U.S.C. 208 and, therefo
that statute is not applicable to p
ticipation in such matters. Howev
even if the statute were held to be
plicable to participation in such m
ters, the Board of Governors has
termined that the financial intere
of a director, the director's spouse
minor child, or related persons in su
matters are too remote or too incon
quential to affect the integrity of
rectors' services and, accordingly,
prohibitions of 18 U.S.C. 208(a)
§ 264a.3 of this part shall not apply
a director's participation in such m
ters.

(e) Nothing in this section shall p
clude a director from refraining, to
extent consistent with responsibili
imposed upon the directors by
Federal Reserve Act, from partic
tion in a particular matter. The Bo
hereby gives notice of its intentio
undertake a continuing review of
experience of Reserve Bank boa
under this regulation with a view
assuring preservation of and adh
ence to the intent of both the Fed

Reserve Act and 18 U.S.C. 208, as amended. In the course of such review, particular attention will be given to the provisions of this section.

PART 264b—RULES REGARDING FOREIGN GIFTS AND DECORATIONS

Sec.

264b.1 Purpose and scope.
264b.2 Definitions.
264b.3 Foreign gifts.
264b.4 Foreign decorations.
264b.5 Disposal of foreign gifts and decorations.
264b.6 Official use of foreign gifts and decorations.
264b.7 Reporting requirements.
264b.8 Implementing procedures.
264b.9 Miscellaneous.

AUTHORITY: 5 U.S.C. 7342, as amended; and sec. 11(l) of the Federal Reserve Act, 12 U.S.C. 248(l), 5 U.S.C. 552.

SOURCE: 44 FR 64399, Nov. 7, 1979, unless otherwise noted.

§ 264b.1 Purpose and scope.

This regulation implements the 1977 Amendments to the Foreign Gifts and Decorations Act, Pub. L. 95-105, which restricts Board Members' and employees' acceptance of foreign gifts and decorations. The restrictions apply to gifts whether they are tangible or intangible. Different rules apply depending on whether the gift has only "minimal value." There are also rules regarding acceptance of decorations from foreign governments.

§ 264b.2 Definitions.

(a) The term "Board Members and employees" means:

(1) Members of the Board of Governors of the Federal Reserve System, officers, and other employees of the Board;

(2) Consultants while employed by the Board; and acting on behalf of the Board; and

(3) Spouses and dependents of Board Members, officers, employees, and consultants as defined in this section.

(b) The term "foreign government" means any unit of a foreign governmental authority (or its agent or representative), including any foreign, national, state, local, or municipal government, and any international or multinational organization whose membership is composed of any such units.

(c) The term "decoration" means an order, device, medal, badge, insignia, emblem, or award.

§ 264b.3 Foreign gifts.

Except as provided below, Board Members and employees shall not request, or otherwise encourage the tender of, or accept, or retain, a tangible or intangible gift from a foreign government.

(a) *Gifts of minimal value.* Board Members and employees may accept and retain a tangible or intangible gift of minimal value—that is, one having a retail value in the United States at the time of acceptance of $100 or less—from a foreign government intended as a souvenir or mark of courtesy.

(b) *Educational scholarships or medical treatment.* Board Members and employees may accept and retain a gift of more than minimal value from a foreign government when such gift is in the nature of an educational scholarship or medical treatment.

(c) *Tangible gifts of more than minimal value.* A tangible gift of more than minimal value tendered by a foreign government may be accepted when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. Such a gift accepted under these circumstances is deemed to have been accepted on behalf of the United States, and, upon acceptance, it shall become the property of the United States. Within 60 days after accepting a gift under these circumstances the member or employee must deposit the gift with the Secretary of the Board.

(d) *Travel or expenses for travel.* Board Members and employees may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and is permitted by the Board. Requests for Board approval of acceptance of such expenses shall be submitted to the Vice Chairman of the Board.

§ 264b.4 Foreign decorations.

Board Members and employees may accept, retain, and wear a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance by a foreign government, subject to the approval of the Board. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the Board Member or employee, within 60 days of acceptance, with the Secretary of the Board for official use or disposal. Requests for Board approval of acceptance of such decorations shall be submitted in advance to the Vice Chairman of the Board.

§ 264b.5 Disposal of foreign gifts and decorations.

Within 30 days after a tangible gift or decoration is deposited for disposal with the Secretary of the Board, the gift or decoration shall be returned to the donor, or shall be forwarded to the Administrator of General Services for transfer, donation, or other disposal in accordance with applicable law, or shall be retained for official use of the Board.

§ 264b.6 Official use of foreign gifts and decorations.

A foreign gift or decoration deposited with the Secretary of the Board may, with the approval of the Board, be retained for official Board use. The Secretary shall insure that, whenever possible, "official board use" of such a gift will benefit the greatest number of Board employees and/or the public. Within 30 days after terminating the "official use" of a foreign gift, the Board shall report the termination of the official use to the Administrator of the General Services, in accordance with applicable GSA regulations.

§ 264b.7 Reporting requirements.

(a) When a Board Member or employee deposits a tangible gift or decoration of more than minimal value for disposal or for official use, or within 30 days after a Board Member or employee accepts travel or travel expenses as provided in this section, the Board Member or employee shall file a statement with the Secretary of the Board containing the information prescribed in paragraphs (b) and (c) that follow.

(b) For each tangible gift or decoration deposited with the Secretary of the Board, a Board Member or employee shall file a statement which shall include the following information:

(1) The name and position of the employee;

(2) A full description of the gift and the circumstances justifying acceptance;

(3) The identity of the foreign government and the name and position of the individual who presented the gift;

(4) The date of acceptance of the gift;

(5) The estimated value in the United States of the gift at the time of acceptance;

(6) Disposition or current location of the gift; and

(7) An indication whether the Board Member or employee is interested in participating in the sale of the tangible gift or decoration if it is sold by the General Services Administration.

(c) For each gift of travel or travel expenses accepted, a Board Member or employee shall file a statement which shall include the following information:

(1) The name and position of the employee;

(2) A brief description of the travel or travel expenses, including the amount, or estimated costs, and the circumstances justifying acceptance; and

(3) The identity of the foreign government and the name and position of the individual who provided the travel or travel expenses.

(d) Board Members and employees need not report the following gifts and decorations:

(1) Gifts of minimal value;

(2) Decorations retained by the employee with the approval of the Board;

(3) Gifts and decorations offered but refused by the Board Member or employee.

(e) Not later than January 31 of each year, the Secretary of the Board shall compile a listing of all statements filed during the preceding year by Board Members and employees pursuant to this section and shall transmit such listing to the Secretary of State for the purpose of publishing a listing of all such statements in the FEDERAL REGISTER.

§ 264b.8 Implementing procedures.

The Board shall:

(a) Report to the Attorney General cases in which there is reason to believe that a Board Member or employee has violated this section;

(b) Establish a procedure in the Office of the Secretary of the Board for obtaining an appraisal, when necessary, of the value of gifts; and

(c) Take any other actions necessary to carry out the purpose of this subsection, including appropriate disciplinary action for failure to comply with provisions of this part.

§ 264b.9 Miscellaneous.

The provisions of this part do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

Sec.
265.1 Delegation of functions generally.
265.1a Specific functions delegated to Board members.
265.2 Specific functions delegated to Board employees and Federal Reserve Banks.
265.3 Review of action at delegated level.

AUTHORITY: Sec. 11, 38 Stat. 261; 12 U.S.C. 248.

SOURCE: 32 FR 8519, June 14, 1967; 32 FR 8956, June 23, 1967, unless otherwise noted.

§ 265.1 Delegation of functions generally.

Pursuant to the provisions of section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)), the Board of Governors of the Federal Reserve System delegates authority to exercise those of its functions described in this part, subject to the limitations and guidelines herein prescribed. The Chairman of the Board of Governors assigns the responsibility for the performance of such delegated functions to the persons herein specified. A delegee may submit any matter to the Board for determination if the delegee considers such submission appropriate because of the importance or complexity of the matter.

[32 FR 8519, June 14, 1967; 32 FR 8956, June 23, 1967, as amended at 41 FR 53775, Dec. 9, 1976]

§ 265.1a Specific functions delegated to Board members.

(a) *Any Board member designated by the Chairman* is authorized:

(1) Under section (a)(6) of the Freedom of Information Act (5 U.S.C. 552) and Part 261 of this chapter (Rules Regarding Availability of Information) to review and make a determination with respect to an appeal of denial of access to records of the Board made in accordance with the procedures presescribed by the Board.

(2) To approve, after receiving the recommendations of the Director of the Division of Banking Supervision and Regulation and the General Counsel, amendments to any notice of charges, proposed order to cease and desist, or temporary cease-and-desist order, previously approved by the Board of Governors pursuant to the Financial Institutions Supervisory Act, 12 U.S.C. 1818(b), (c) (Federal Deposit Insurance Act, sections 8 (b) and (c)).

(b) *Any Board member* is authorized, when requested by the Secretary of the Board, to act upon any request to the Board filed with the Secretary pursuant to § 263.10(e) of the Board's Rules of Practice for Formal Hearings (12 CFR Part 263) for special permission to appeal from a ruling of the presiding officer at any hearing conducted pursuant to such rules on any motion ruled upon by such presiding officer (provided, that if such special permission is granted the merits of the appeal shall thereupon be presented to the Board for decision). Notwithstanding the provisions of § 265.3 hereof, the denial of such special permission pursuant to this paragraph shall be subject to review by the Board only upon the request of a member of the Board made within two days following the denial. No person claiming to be adversely affected by such denial shall have any right to petition the Board or any Board member for review or reconsideration of such action.

(c) *Any three Board members designated from time to time by the Chairman* (the "Action Committee") are authorized, upon certification by the Secretary of the Board of an absence of a quorum of the Board present in person, to act by unanimous vote on any matter that the Chairman of the Board has certified must be acted upon promptly in order to avoid delay that would be inconsistent with the public interest, other than (i) those relating to rulemaking, (ii) those pertaining principally to monetary and credit policies, and (iii) those for which a statute expressly requires the affirmative vote of more than three members of the Board.

[40 FR 1506, Jan. 8, 1975, as amended at 40 FR 13477, Mar. 27, 1975; 41 FR 14860, Apr. 8, 1976; 41 FR 55858, Dec. 23, 1976; 42 FR 25318, May 17, 1977; 43 FR 34482, Aug. 4, 1978; 45 FR 34869, May 23, 1980; 47 FR 27845, June 28, 1982]

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

(a) The Secretary of the Board (or, in the Secretary's absence, the Acting Secretary) is authorized:

(1) Under the provisions of Part 261 of this chapter, to make available, upon request, information in the records of the Board.

(2) Under the provisions of sections 18(c) and 18(c)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c) and 1828(c)(4)), sections 3(a), 4(c)(8) and 4(c)(14) of the Bank Holding Company Act (12 U.S.C. 1842(a), 1843(c) (8) and (14)), sections 5(a), 5(b) and 7(d) of the Bank Service Corporation Act (12 U.S.C. 1865(a), 1865(b) and 1867(d)), the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 601-604a and 611 *et seq.*), and §§ 225.14, 225.23, and 225.41-43 of Regulation Y (12 CFR 225.14, 225.23, and 225.41-43), §§ 211.3(a), 211.4(c), 211.5(c) and 211.34 of Regulation K (12 CFR 211.3(a), 211.4(c), 211.5(c) and 211.34), to furnish reports on competitive factors involved in a bank merger to the Comptroller of the Currency and the Federal Deposit Insurance Corporation and to take actions the Reserve Bank could take except for the fact that the Reserve Bank may not act because a director or senior officer of any holding company, bank, or company involved in the transaction is a director of a Federal Reserve Bank or branch.

(3) Under the provisions of sections 25 and 25(a) of the Federal Reserve Act and Parts 211 and 213 of this chapter (Regulations K and M), to approve the establishment, directly or indirectly, of a foreign branch or agency by a member bank or corporation organized under section 25(a) (an "Edge" corporation) or operating under an agreement with the Board pursuant to section 25 (an "Agreement" corporation) if all of the following conditions are met:

(i) The appropriate Reserve Bank recommends approval.

(ii) The relevant divisions of the Board's staff recommend approval.

(iii) No significant policy issue is raised by the proposal as to which the Board has not expressed its view.

(iv) The application is not one for the applicant's first full-service branch in a foreign country.

(4) Under the provisions of sections 25 and 25(a) of the Federal Reserve Act and Parts 211 and 213 of this chapter (Regulations K and M), to grant specific consent to the acquisition, either directly or indirectly, by a member bank or an Edge or Agreement corporation of stock of (i) a company chartered under the laws of a foreign country or (ii) a company chartered under the laws of a State of the United States that is organized and operated for the purpose of financing exports from the United States, and to approve any such acquisition that may exceed the limitations in section 25(a) of the Federal Reserve Act based on such a corporation's capital and surplus, if all of the following conditions are met:

(*a*) The appropriate Reserve Bank recommends approval.

(*b*) All relevant divisions of the Board's staff recommend approval.

(*c*) No significant policy issue is raised by the proposal as to which the Board has not expressed its view.

(*d*) Such acquisition does not result, either directly or indirectly, in the acquisition by such bank or corporation of effective control of any such company except that this condition need not be met if (*1*) the company is to perform nominee, fiduciary, or other services incidental to the activities of a foreign branch or affiliate of such bank or corporation, or (*2*) the stock is being acquired by such bank or corporation from its parent bank or bank holding company, or subsidiary Edge or Agreement corporation, as the case may be, and such selling parent or subsidiary holds such stock with the consent of the Board pursuant to Parts 211, 213, or 225 of this chapter (Regulations K, M, and Y).

(5) Under the provisions of sections 25 and 25(a) of the Federal Reserve Act and Parts 211 and 213 of this chapter (Regulations K and M), to permit an Edge or Agreement corporation to exceed the limitations in § 211.9 (b) and (c) of this chapter (Regulation K),[1] if all of the following conditions are met:

(i) The appropriate Reserve Bank recommends approval.

(ii) All relevant divisions of the Board's staff recommend approval.

(iii) No significant policy issue is raised by the proposal as to which the Board has not expressed its view.

(6) Under sections 25 and 25(a) of the Federal Reserve Act and Parts 211 and 213 of this chapter (Regulations K and M), to approve, under § 211.4 of this chapter (Regulation K), the issuance by an Edge or Agreement corporation or a subsidiary thereof of debentures, bonds, promissory notes (with a maturity of more than one year), or similar obligations, if all of the following conditions are met:

(i) The appropriate Reserve Bank recommends approval.

(ii) All relevant divisions of the Board's staff recommend approval.

(iii) No significant policy issue is raised by the proposal as to which the Board has not expressed its view.

(7) Under the provisions of section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843), and § 225.4(f) of Part 225 of this chapter (Regulation Y), to grant specific consent to the ownership or control, either directly or indirectly, by a bank holding company of voting shares of a company chartered under the laws of a foreign country, if all of the following conditions are met:

(i) The appropriate Reserve Bank recommends approval.

(ii) All relevant divisions of the Board's staff recommend approval.

(iii) No significant policy issue is raised by the proposal as to which the Board has not expressed its view.

(iv) Such acquisition does not result, either directly or indirectly, in the acquisition by such bank holding company of control of any such company (other than a company performing nominee, fiduciary, or other services incidental to the activities of a direct or indirect foreign subsidiary of such corporation).

(8) Under the provisions of § 262.2 (a) and (b) of the Board's Rules of Procedure, to extend, when appropriate, the time period provided for public participation with respect to proposed regulations of the Board of Governors.

(9) Under the provisions of section 6621 of the Internal Revenue Code (26 U.S.C. 6621), to determine and report to the Secretary of Treasury or the Secretary's delegate, the average predominant prime rate quoted by commercial banks to large businesses.

(10) To grant or deny requests for the extension of any time period provided in any notice, order, rule or regulation of the Board relating to the filing of information, comments, opposition, briefs, exceptions or other matters, in connection with any application, request or petition for the approval, authority, determination, or permission of, or any other action by the Board sought by any person. Not-

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[1] Subject, of course, to the limitations in section 25(a) relating to aggregate liabilities outstanding on debentures, bonds, and promissory notes.

withstanding the provisions of § 265.3 hereof, no person claiming to be adversely affected by any action of the Secretary on any such request shall have the right to petition the Board or any Board member for review or reconsideration of such action.

(11) Under the provisions of section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)) to conform references to administrative positions or units in outstanding rules and regulations of the Board to changes in the administrative structure of the Board, the Government of the United States and agencies thereof, and to conform citations and references in outstanding rules and regulations of the Board with other regulatory or statutory changes adopted or promulgated by the Board, the Government of the United States and agencies thereof.

(12) Pursuant to the requirement of the Privacy Act (5 U.S.C. 552a(p)), to approve future Annual Reports on the Privacy Act from the Board of Governors to the Office of Management and Budget for inclusion in the President's annual consolidated report to the Congress.

(13) Under the provisions of section 19(j) of the Federal Reserve Act (12 U.S.C. 371b) and § 217.4 (a) and (d) of Regulation Q (12 CFR 217.4 (a) and (d)) to permit member banks to waive the penalty for early withdrawal of a time deposit in § 217.4(d) (Regulation Q), if all of the following conditions are met:

(i) The President of the United States declares an area a major disaster area or an emergency area pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order No. 11795 of July 11, 1974.

(ii) A waiver is limited in effectiveness to depositors suffering disaster or emergency-related losses in the officially designated disaster or emergency area.

(iii) The appropriate Reserve Bank recommends approval.

(b) The General Counsel of the Board (or, in the General Counsel's absence, the Acting General Counsel) is authorized:

(1) Under the provisions of section 2 (g) of the Bank Holding Company Act (12 U.S.C. 1841(g)), to determine whether a company that transfers shares to any of the types of transferees specified therein is incapable of controlling the transferee.

(2) Under the provisions of section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)), to determine that a company engaged in activities of a financial, fiduciary, or insurance nature falls within the exemption described therein permitting retention of acquisition of control thereof by a bank holding company.

(3) Under the provisions of sections 1101-1103 and section 6158 of the Internal Revenue Code (26 U.S.C. 1101-1103 and 6158) to make certifications (prior and final) for Federal tax purposes with respect to distributions and divestitures pursuant to the Bank Holding Company Act.

(4) Under the provisions of section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 222.4(a) of this chapter (Regulation Y), to issue an order for a hearing to be conducted for the purpose of determining whether a company engaged in activities of a financial, fiduciary, or insurance nature falls within the exemption described therein permitting retention or acquisition of control thereof by a bank holding company.

(5) Pursuant to the provisions of Part 261 of this chapter, to make available information of the Board of the nature and in the circumstances described in §§ 261.6(b) and 261.7 of this chapter.

(6) Pursuant to § 263.6(d) of this chapter, to designate Board staff attorneys as Board counsel in any proceeding ordered by the Board to be conducted in accordance with Part 263 of this chapter.

(7) Pursuant to § 262.3(i) of this chapter (Rules of Procedure) to determine whether or not to grant a request for reconsideration of any action taken by the Board with respect to an application as provided in that part.

(8) To approve provisions of Federal Reserve Bank operating circulars related to uniform services.

(9) Under the provisions of § 212.4(b) of this chapter (Regulation L relating to interlocking relationships permitted by Board order), to grant exceptions

from the prohibitions of Regulation L when the primary Federal supervisor of the depository institution in need of management assistance has approved the exception.

(10) Pursuant to the provisions of § 265.25 of this chapter (Rules of Procedure) after consultation with the directors of other interested Divisions of the Board and the appropriate Reserve Bank, to order, under such terms and conditions as the General Counsel deems appropriate, that a public meeting or other proceeding be held in connection with any application or notice filed with the Board and to designate the presiding officer in any such proceeding.

(c) The Director of the Division of Banking Supervision and Regulation (or, in the Director's absence, the Acting Director) is authorized:

(1) Under the provisions of sections 9 and 25(a) of the Federal Reserve Act (12 U.S.C. 325, 338 and 625), section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)), and section 7(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(b)(1)), to select or to approve the appointment of Federal Reserve Examiners, assistant examiners and special examiners for the purpose of making examinations for or by the direction of the Board.

(2) Under the provisions of the 19th paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 625) and § 211.9(e) of this chapter (Regulation K), to require submission and publication of reports by an "Edge Act" corporation.

(3) Under the provisions of section 5 of the Bank Holding Company Act (12 U.S.C. 1844), after having received clearance from the Bureau of the Budget (where necessary) and in accordance with the law of Administrative Procedure (5 U.S.C. 553), to promulgate registration, annual report, and other forms for use in connection with the administration of such Act.

(4) Under the provisions of section 12(g) of the Securities Exchange Act (15 U.S.C. 781(g)):

(i) To accelerate the effective date of a registration statement filed by a member State bank with respect to its securities:

(ii) To accelerate termination of the registration of such a security that is no longer held of record by 300 persons; and

(iii) To extend the time for filing a registration statement by a member State bank.

(5) Under the provisions of section 12(d) of the Securities Exchange Act (15 U.S.C. 781(d)), to accelerate the effective date of an application by a member State bank for registration of a security on a national securities exchange.

(6) Under the provisions of section 12(f) of the Securities Exchange Act (15 U.S.C. 781(f)), to issue notices with respect to an application by a national securities exchange for unlisted trading privileges in a security of a member State bank.

(7) Under the provisions of section 12(h) of the Securities Exchange Act (15 U.S.C. 781(h)), to issue notices with respect to an application by a member State bank for exemption from registration.

(8) Under the provisions of § 206.5 (f) and (i) of this chapter (Regulation F), to permit the mailing of proxy and other soliciting materials by a member State bank before the expiration of the time prescribed therein.

(9) Under the provisions of §§ 206.41, 206.42, and 206.43 (Instructions as to Financial Statements 9, 4, and 3, respectively) of this chapter (Regulation F), to permit the omission of financial statements from reports by a member State bank and/or to require other financial statements in addition to, or in substitution for, the statements required therein.

(10) To exercise the functions described in of paragraph (f)(4) of this section in cases in which the conditions specified therein as prerequisites to exercise of such functions by the Federal Reserve Banks are not present or in which, even though such conditions are present, the appropriate Federal Reserve Bank considers that nevertheless it should not take action on the member bank's request, and to exercise the functions described in paragraphs (f) (1), (2), and (7) of this section in cases in which the appropriate Federal Reserve Bank considers that it

should not take action to approve the member bank's request.

(11) Under sections 25 and 25(a) of the Federal Reserve Act and Parts 211 and 213 of this chapter (Regulations K and M), to approve increases and reductions in the capital stock and amendments to the articles of association of a corporation organized under section 25(a) and additional investments by a member bank in the stock of a corporation operating under an agreement with the Board pursuant to section 25.

(12) To exercise the functions described in paragraphs (f)(15) (i) and (ii) of this section; and to exercise the functions described in paragraph (f)(15)(iii) of this section in those cases in which the appropriate Federal Reserve Bank concludes that, because of unusual considerations, or for other good cause, it should not take action.

(13) Under the provisions of the seventh paragraph of section 25 of the Federal Reserve Act (12 U.S.C. 602), to require submission of a report of condition respecting any foreign bank in which a member bank holds stock acquired under the provisions of § 213.4 of this chapter (Regulation M).

(14) Under the twelfth paragraph of section 13 of the Federal Reserve Act (39 Stat. 754), to permit any member bank to accept drafts or bills of exchange drawn upon it for the purpose of furnishing dollar exchange.

(15) Under the provisions of section 4(b) of the Federal Deposit Insurance Act (12 U.S.C. 1814(b)), to certify to the Federal Deposit Insurance Corporation that, with respect to the admission of a State-chartered bank to Federal Reserve membership, the factors specified in section 6 of that Act (12 U.S.C. 1816) were considered.

(16) Under the provisions of section 17(A)(c)(2) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78 q-1), to accelerate the effective date of a registration statement filed by a member State bank or a subsidiary thereof, a bank holding company, or a subsidiary of a bank holding company which is a bank as defined in section 3(a)(6) of that Act other than a bank specified in clause (i) or (iii) of section 3(a)(34)(B) of that Act (15 U.S.C. 78c) with respect to its transfer agent activities.

(17) Under the provisions of section 17A(c)(3)(C) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78q-1(c)(3)(C)), to withdraw or cancel the transfer agent registration of a member State bank or a subsidiary thereof, a bank holding company, or a subsidiary bank of a bank holding company that is a bank as defined in section 3(a)(6) of the Act (other than a bank specified in clause (i) or (iii) of section 3(a)(34)(B) of the Act (15 U.S.C. 78c(a)(3)(a)(34)(B))) that has filed a written notice of withdrawal with the Board or upon a finding that such transfer agent is no longer in existence or has ceased to do business as a transfer agent.

(18) Under the provisions of §§ 207.2(f), 220.2(e), and 221.3(d) of this chapter (Regulations G, T, and U, respectively) to approve issuance of the list of OTC margin stocks and to add, omit, or remove any stock in circumstances indicating that such change is necessary or appropriate in the public interest.

(19) Under the provisions of § 207.4(a)(2)(ii) of this chapter (Regulation G) to approve repayments of the "deficiency" with respect to stock option or employee stock purchase plan credit in lower amounts and over longer periods of time than those specified in the regulation.

(20) Pursuant to the provisions of Part 261 of this chapter, to make available reports and other information of the Board acquired pursuant to Parts 207, 220, 221, and 224 (Regulations G, T, U and X) of the nature and in circumstances described in § 261.6(a) (2) and (3) of Part 261.

(21) Pursuant to the provisions of section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)) and sections 17(c), 17(g), and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78q(c), 78q(g), and 78w) to issue examination or inspection manuals, registration, report, agreement, and examination forms, guidelines, instructions or other similar materials for use in connection with the administration of sections 7, 8, 15B and 17A(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78g, 78h, 78o-4, and 78q-1).

(22) With the prior concurrence of the appropriate Federal Reserve Bank and the General Counsel of the Board, to act to refuse an application to the Board to stay, modify, terminate or set aside any effective cease and desist order previously issued by the Board pursuant to section 8(b) of the Federal Deposit Insurance Act or any written agreement between the Board or the Reserve Bank and a bank holding company or any nonbanking subsidiary thereof or a State member bank. (12 U.S.C. 1818(b).)

(23) Pursuant to section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w) (i) to grant or deny requests for waiver of examination and waiting period requirements for municipal securities principals and municipal securities representatives under Municipal Securities Rulemaking Board Rule G-3, (ii) to grant or deny requests for a determination that a natural person or municipal securities dealer subject to a statutory disqualification is qualified to act as a municipal securities principal or municipal securities representative or municipal securities dealer under Municipal Securities Rulemaking Board Rule G-4, and (iii) to approve or disapprove clearing arrangements under Municipal Securities Rulemaking Board Rule G-8, in connection with the administration of Municipal Securities Rulemaking Board rules for municipal securities dealers for which the Board is the appropriate regulatory agency under section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34). (15 U.S.C. 78w and 12 U.S.C. 248.)

(24) To approve a State member bank's proposed subordinated debt issue as an addition to the bank's capital structure if all of the following conditions are met:

(i) The terms of the proposed debt issue satisfy the requirements of §§ 204.1(f)(3)(i) and 217.1(f)(3)(i) of this part (Regulations D and Q) and the Board's guideline criteria for approval of subordinated debt as an addition to capital.

(ii) The appropriate Reserve Bank recommends approval.

(iii) No significant policy issue is raised by the proposed issue as to which the Board has not expressed its view.

(25) Under the provisions of section 17(c)(3) of the Securities Exchange Act of 1934, as amended, to make available upon request to the Securities and Exchange Commission reports of examination of transfer agents, clearing agencies and municipal securities dealers for which the Board is the appropriate regulatory agency for use by the Commission in the exercise of its supervisory responsibilities under that statute.

(26) To approve the retirement prior to maturity of capital notes issued by a state member bank pursuant to §§ 204.1(f)(3)(i) and 217.1(f)(3)(i) of this part (Regulations D and Q), provided the Director is satisfied that that bank's capital position will be adequate after the proposed redemption.

(27) Under sections 25 and 25(a) of the Federal Reserve Act and Part 211 of this chapter (Regulation K), to waive the 45 days' prior notice period for establishment of a branch by a U.S. banking organization under § 211.3(a)(3) and for an investment that qualifies for the prior notification procedures set forth in § 211.5(c)(2) of Regulation K (12 CFR 211.3(a)(3) and 211.5(c)(2)).

(28) Pursuant to § 211.5(c)(2) of this chapter (Regulation K), to suspend the notification period or to require that an investor file an application for the Board's specific consent.

(29) To grant or deny requests for modification, including extension of time, for the performance of a commitment or condition relied on by the Board or its delegee in taking any action under the provisions of the Bank Holding Company Act, the Bank Merger Act, the Change in Bank Control Act of 1978, the Federal Reserve Act or the International Banking Act. In acting on requests hereunder, the Director may take into account changed circumstances and good faith efforts to fulfill the commitments or conditions, and shall consult with the Directors of other interested divisions, where appropriate. The Director may not take any action hereunder that would be inconsistent with or result in

an evasion of the provisions of the Board's original action.

(30) Under the provisions of section 3(a) of the Bank Holding Company Act (12 U.S.C. 1842(a)) and the Change In Bank Control Act (12 U.S.C. 1817(j)) to take actions the Reserve Bank could take under paragraphs (f)(22) and (f)(30) of this section if immediate or expeditious action is required to avert failure of a bank or because of an emergency.

(31) to provide to the Department of Labor written notification of possible significant violations of the Employee Retirement Income Security Act ("ERISA") by State member banks, in accordance with section 3004(b) of ERISA and the Interagency Agreement adopted to implement the provisions thereof.

(32) Under the provisions of Subpart D of the Board's Regulation K (12 CFR Part 211), to determine the need for establishment and the amount of any allocated transfer risk reserve against certain international assets and to notify banking institutions of the determination and the amount of such reserve and whether such reserve may be reduced.

(33) Under the provisions of §§ 263.38 and 263.40 of the Board's Procedures for Issuance and Enforcement of Directives to Maintain Adequate Capital, Subpart D of the Board's Rules of Practice for Hearings (12 CFR Part 263), and with the concurrence of the general counsel, to issue a notice that a state member bank or bank holding company has insufficient capital and that directs said banking organization to file with its regional Reserve Bank a capital improvement plan.

(d)—(e) [Reserved]

(f) *Each Federal Reserve Bank* is authorized as to a member bank or other indicated organization for which the Reserve Bank is responsible for receiving applications or registration statements:

(1) Under the provisions of the third paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 321), section 5155 of the Revised Statutes (12 U.S.C. 36), and § 208.8 of this chapter (Regulation H), to approve the establishment by a State member bank of a domestic branch if the Reserve Bank is satisfied that approval is warranted after giving consideration to:

(i) The bank's capitalization in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management;

(ii) The ability of bank's management to cope successfully with existing or foreseeable problems, and to staff the proposed branch without any significant deterioration in the overall management situation;

(iii) The convenience and needs of the community;

(iv) The competitive situation (either actual or potential);

(v) The prospects for profitable operations of the proposed branch within a reasonable time, and the ability of the bank to sustain the operational losses of the proposed branch until it becomes profitable; and

(vi) The reasonableness of bank's investment in bank premises after the expenditure for the proposed branch.

(2) Under the provisions of the sixth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 324) and the provisions of section 5199 of the Revised Statutes (12 U.S.C. 60), to permit a State member bank to declare dividends in excess of net profits for the calendar year combined with the retained net profits of the preceding 2 years, less any required transfers to surplus or a fund for the retirement of any preferred stock, if the Reserve Bank is satisfied that approval is warranted after giving consideration to:

(i) The bank's capitalization in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management; and

(ii) The bank's capitalization after payment of the proposed dividend.

(3) Under the provisions of the 10th paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 328), to approve or deny applications by State banks for waiver of the required 6

months' notice of intention to withdraw from Federal Reserve membership.

(4) Under the provisions of the 11th paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 329), to permit a State member bank to reduce its capital stock if its capitalization thereafter will be:

(i) In conformity with the requirements of Federal law, and

(ii) Adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management.

(5) Under the provisions of the seventeenth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 334), to extend the time, for good cause shown, within which an affiliate of a State member bank must file reports.

(6) Under the provisions of the seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372), to permit a member bank or a Federal or State branch or agency of a foreign bank that is subject to reserve requirements under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105) to accept drafts or bills of exchange in an aggregate amount at any one time up to 200 per cent of its paid up and unimpaired capital stock and surplus, if the Reserve Bank is satisfied that such permission is warranted after giving consideration to the institution's capitalization in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management.

(7) Under the provisions of section 24A of the Federal Reserve Act (12 U.S.C. 371d), to permit a State member bank to invest in bank premises in an amount in excess of its capital stock, if the Reserve Bank is satisfied that approval is warranted after giving consideration to:

(i) The bank's capitalization in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management: *And provided*, That:

(ii) Upon completion of the proposed investment, the bank's aggregate investment (direct and indirect) in bank premises plus the indebtedness of any wholly owned bank premises subsidiary will not exceed 40 percent of its total capital funds (including capital notes and debentures) plus reserves other than valuation reserves.

(8) Under the provisions of the ninth paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 615), to extend the time in which an "Edge Act" corporation must divest itself of stock acquired in satisfaction of a debt previously contracted.

(9) Under the provisions of the 22d paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 628), to extend the period of corporate existence of an "Edge Act" corporation.

(10) Under the provisions of section 5(a) of the Bank Holding Company Act (12 U.S.C. 1844(a)), to extend the time within which a bank holding company must file a registration statement.

(11) Under the provisions of section 4(a) of the Bank Holding Company Act (12 U.S.C. 1843(a)), to extend the time within which a bank holding company must divest itself of interests in nonbanking organizations.

(12) Under the provisions of section 4(c)(2) of the Bank Holding Company Act (12 U.S.C. 1843(c)), to extend the time within which a bank holding company must divest itself of interests in a nonbanking organization acquired in satisfaction of a debt previously contracted.

(13) Under the provisions of section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)), to require reports under oath to determine whether a company is complying with the provisions of such Act and the Board's regulations promulgated thereunder.

(14) Under the provisions of § 208.11(c) of this chapter (Regulation H), to extend the time within which a member bank that has given notice of intention to withdraw from member-

ship must surrender its Federal Reserve Bank stock and its certificate of membership.

(15) Under the provisions of §§ 216.5 (b) and (d) and 216.6 of this chapter (Regulation P), with respect to State member banks only: (i) To require reports on security devices; (ii) to require special reports; and (iii) to determine, in view of the provisions of §§ 216.3 and 216.4 of this chapter, whether security devices and procedures are deficient in meeting the requirements of Part 216 of this chapter, to determine whether such requirements should be varied in the circumstances of a particular banking office, and to require corrective action.

(16) Under § 208.10(a) of this chapter (Regulation H), for good cause shown, to extend the time for publication of reports of condition, such extensions not ordinarily to be for more than 10 days except in very unusual circumstances beyond control of the reporting bank.

(17) Under the provisions of § 207.1(b) of this chapter (Regulation G), to approve applications for termination of registration by persons who are registered pursuant to § 207.1(a) of this chapter.

(18) Under the provisions of the second paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 612) and § 211.4(a)(2) of this chapter (Regulation K), to issue to an Edge Corporation a final permit to commence business and to approve amendments to the Articles of Association of any "Edge Corporation" to reflect the following:

(i) Any increase in the capital stock of such corporation where all additional shares are to be acquired by existing shareholders; (ii) any change in the location of the home office of such corporation within the city where such corporation is presently located; and (iii) any change in the number of members of the Board of Directors of such corporation; (iv) any change in the name of such corporation; and (v) deletion of the requirement that all directors and shareholders of such corporation must be U.S. citizens.

(19) Under § 225.4(d) of this chapter (Regulation Y),

(i) To notify a bank holding company that has informed it of a proposed acquisition of a going concern that, because the circumstances surrounding the application indicate that additional information is required or that the acquisition should be considered by the Board, the acquisition should not be consummated until specifically authorized by the Reserve Bank or by the Board.

(ii) To permit a bank holding company that has informed it of a proposed acquisition of a going concern to make the acquisition before the expiration of the 45-day period referred to in that paragraph, because exigent circumstances justify consummation of the acquisition at an earlier time.

(20) Under § 225.4(b)(1) of this chapter (Regulation Y), and subject to § 265.3 if a person submitting adverse comments that the Reserve Bank has decided are not substantive files a petition for review by the Board of that decision,

(i) To permit a bank holding company to engage *de novo* in activities specified in § 225.4(a) (or retain shares in a company established *de novo* and engaging in such activities) if its evaluation of the considerations specified in section 4(c)(8) of the Bank Holding Company Act leads it to conclude that the proposal can reasonably be expected to produce benefits to the public.

(ii) To notify a bank holding company that the proposal should not be consummated until specifically authorized by the Reserve Bank or by the Board or that the proposal should be processed in accordance with the procedures of § 225.4(b)(2).

(iii) To permit a bank holding company to consummate the proposal before the expiration of the 45-day period referred to in § 225.4(b)(1), because exigent circumstances justify consummation at an earlier time.

(21) Under § 225.4(c)(2) of this chapter (Regulation Y) to permit or stay a proposed de novo modification or relocation of activities engaged in by a bank holding company on the same basis as de novo proposals under paragraph (f)(20) of this section.

(22) Under the provisions of section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), sections 3(a)

and 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(a) and 1843(c)(8)), sections 5(a), 5(b) and 7(d) of the Bank Service Corporation Act (12 U.S.C. 1865(a), 1865(b) and 1867(d)), and §§ 225.14 and 225.23 of Regulation Y (12 CFR 225.14 and 225.23), to approve applications requiring prior approval of the Board, and under the provisions of section 18(c)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(4)), to furnish to the Comptroller of the Currency and the Federal Deposit Insurance Corporation reports on competitive factors involved in a bank merger required to be approved by one of those agencies, unless one or more of the following conditions is present:

(i) A member of the Board has indicated an objection prior to the Reserve Bank's action; or

(ii) The Board has indicated that such delegated authority shall not be exercised by the Reserve Bank in whole or in part; or

(iii) A written substantive objection to the application has been properly made; or

(iv) The application raises a significant policy issue or legal question on which the Board has not established its position; or

(v) With respect to bank holding company formations, bank acquisitions or mergers, the proposed transaction involves two or more banking organizations:

(A) That rank among a State's five largest banking organizations, or among the 50 largest banking organizations in the United States (as measured by total domestic deposits within the relevant area); or

(B) That, upon consummation of the proposal, would control over 30 percent of total deposits in banking offices in the relevant geographic market, or would result in an increase of at least 200 points in the Herfindahl-Hirschman Index ("HHI") in a highly concentrated market (a market with a post-merger HHI of at least 1800); or

(C) Where divestitures designed to address any substantial anticompetitive effects are not effected on or before consummation of the proposed transaction; or

(vi) With respect to nonbank acquisitions:

(A) The nonbanking activities involved do not clearly fall within activities that the Board has designated as permissible for bank holding companies under § 225.25(b) of Regulation Y; or

(B) The proposal would involve the acquisition by a banking organization that has total domestic banking assets of $1 billion or more of a nonbanking organization that appears to have a significant presence in a permissible nonbanking activity.[3]

(23) Under the provisions of the first paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 325) to approve applications for membership in the Federal Reserve System if the Reserve Bank is satisfied with respect to each of the following criteria:

(i) The financial history and condition of the applying bank and the general character of its management;

(ii) The adequacy of its capital structure in relation to the character and condition of its assets and to its existing and prospective deposit liabilities and other corporate responsibilities; and its future earnings prospects;

(iii) The convenience and needs of the community to be served by the bank; and

(iv) Whether its corporate powers are consistent with the purposes of the Federal Reserve Act and the Federal Deposit Insurance Act.

(24) Under the provisions of section 5(c) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)), to grant to a bank holding company a 90-day extension of time in which to file an annual report; and for good cause shown an additional extension of time, not to exceed 90 days, may be granted.

(25) Under § 211.5(e) of this chapter (Regulation K), to extend the time within which an investor must divest itself of interests in a foreign portfolio investment, joint venture or subsidiary

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[3] While other situations may involve the issue of significant presence, the Board regards, as a general guideline, any company that ranks among the 20 largest independent firms in any industry as having a significant presence.

acquired in satisfaction of a debt previously contracted.

(26) With the prior approval of both the Director of the Board's Division of Banking Supervision and Regulation and the General Counsel of the Board: (a) to enter into a written agreement with a bank holding company or any nonbanking subsidiary thereof, with a State member bank, or with any other person or entity subject to the Board's supervisory jurisdiction under 12 U.S.C. 1818(b) concerning the prevention or correction of an unsafe or unsound practice in conducting the business of such bank holding company, nonbanking subsidiary or State member bank or other entity, or concerning the correction or prevention of any violation of law, rule or regulation, or any condition imposed in writing by the Board in connection with the granting of any application or other request by the bank or company or any other appropriate matter; and (b) to stay, modify, terminate or suspend an agreement entered into pursuant to subdivision (a) of this paragraph. Any agreement authorized under this paragraph may, by its terms, be enforceable to the same extent and in the same manner as an effective and outstanding cease-and-desist order that has become final pursuant to 12 U.S.C. 1818 (b) and (k).

(27) Under the provisions of section 2(a)(5)(D) and 3(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)(5)(D), 1842(a)), to extend the time within which a company or a bank must divest itself of bank shares acquired in satisfaction of a debt previously contracted.

(28) Under the provisions of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) and § 225.7 of this chapter (Regulation Y), with respect to a bank holding company or State member bank, to determine the informational sufficiency of notices and reports filed under the Act, to extend periods for consideration of notices, to determine whether a person who is or will be subject to a presumption described in § 225.7(a) of this chapter should file a notice regarding a proposed transaction, and, if all the following conditions are met, to issue a notice of intention not to disapprove a proposed change in control:

(i) No member of the Board has indicated an objection prior to the Reserve Bank's action.

(ii) No senior officer or director of an involved party is also a director of a Federal Reserve Bank or branch.

(iii) All relevant departments of the Reserve Bank concur.

(iv) If the proposal involves shares of a State member bank or bank holding company controlling a State member bank, the appropriate bank supervisory authorities have indicated that they have no objection to the proposal, or no objection has been received from the appropriate bank supervisory authorities within the time allowed by the Act.

(v) No significant policy issue is raised by the proposal as to which the Board has not expressed its view.

(29) Under the provisions of the twenty-first paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 306), to approve the appointment of assistant Federal Reserve agents (including representatives or alternate representatives of such agents).

(30) Under the provisions of the sixteenth paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 304), to classify member banks for the purposes of electing Federal Reserve Bank class A and class B directors, giving consideration to:

(i) The statutory requirement that each of the three groups shall consist as nearly as may be of banks of similar capitalization, and

(ii) The desirability that every member bank have the opportunity to vote for a class A or a class B director at least once every three years.

(31) To extend the time within which a bank holding company may acquire shares, a new bank to be acquired by a bank holding company may be opened for business, or a merger may be consummated in connection with an application approved by the Board, if no material change that is relevant to the proposal has occurred since its approval.

(32) To extend the time within which—(i) A State member bank may establish a domestic branch,

(ii) A member bank may establish a foreign branch, or

(iii) An "Edge Act" or "Agreement" corporation may establish a branch or agency, if no material change has occurred in the bank's (or corporation's) general condition since the application was approved.

(33) To extend the time within which an Edge or Agreement Corporation or a member bank or a bank holding company may accomplish a purchase of stock pursuant to section 25 or 25(a) of the Federal Reserve Act or section 4(c)(13) of the Bank Holding Company Act if no material change has occurred in the general condition of the corporation, the member bank or the bank holding company since such authorization.

(34) To extend the time within which Federal Reserve membership must be accomplished, if no material change has occurred in the bank's general condition since the application was approved.

(35) To waive the penalty for deficient reserves by a member bank if, after a review of all the circumstances relating to such deficiency, the Reserve Bank concludes that waiver of the penalty is warranted, except that in no case shall a penalty for deficient reserves be waived if the deficiency arises out of the bank's gross negligence or conduct inconsistent with the principles and purposes of reserve requirements.

(36) Under the provisions of § 212.6 of this chapter (Regulation L relating to changes in circumstances requiring termination of interlocking management official relationships), to grant time for compliance with section 212 of up to an aggregate of 15 months from the date on which the change in circumstances as specified in that section occurs, if the granting of the additional time appears to be appropriate to avoid undue disruption of the annual shareholders' meetings of the depository organizations involved in the management interlocks.

(37) Under the provisions of section 5 of the International Banking Act of 1978 (12 U.S.C. 3103), to enter into an agreement or undertaking with a foreign bank that such bank shall receive only such deposits at its out-of-home State branch as would be permissible for an Edge Corporation.

(38) Pursuant to § 211.4(c)(2) of this chapter (Regulation K), to approve an Edge Corporation application to establish a branch abroad, provided that no senior officer or director of the involved Parties is also a director of a Reserve Bank or branch and that no significant policy issue is raised by the proposal as to which the Board has not expressed its view.

(39) Pursuant to § 211.5(c) of this Chapter (Regulation K), to grant prior specific consent to an investor for an investment in its first subsidiary, its first joint venture, and its first portfolio investment, where such investment does not exceed the general consent limitations of § 211.5(c)(1)(i) of this Chapter.

(40) Pursuant to § 211.5(c)(2) of this Chapter (Regulation K), to require that an investor file an application for the Board's specific consent.

(41) Under the provisions of section 8(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78h(a)) concerning extensions of credit to finance securities transactions, to accept agreements on behalf of the Board from nonmember banks in the form prescribed by the Board.

(42) Under the provisions of section 4(a)(2) of the Bank Holding Company Act relating to grandfather privileges for certain nonbanking activities of bank holding companies, to determine that termination of grandfathered activities of a particular bank holding company is not warranted: *Provided,* The Reserve Bank is satisfied all of the following conditions are met:

(i) The company or its successor is "a company covered in 1970;"

(ii) The nonbanking activities for which indefinite grandfather privileges are being sought do not present any significant unsettled policy issues; and

(iii) The bank holding company was lawfully engaged in such activities as of June 30, 1968 and has been engaged in such activities continuously thereafter.

(43) Pursuant to § 211.3(a) of this chapter (Regulation K), to approve the establishment, directly or indirectly, of a foreign branch by a member

bank where the application is not one for a full-service branch in a foreign country, provided that no senior officer or director of the involved parties is also a director of a Reserve Bank or branch and that no significant policy issue is raised by the proposal as to which the Board has not expressed its view.

(44) Pursuant to § 211.22(c)(1) of this chapter (Regulation K), to waive the 30 days' prior notification period with respect to a foreign bank's change of home State.

(45) Under sections 4(c)(8) and 5(b) of the Bank Holding Company Act and § 225.4(b) of the Board's Regulation Y, to approve applications by a bank holding company to open additional offices to engage in nonbanking activities for which the particular bank holding company has previously received approval pursuant to Board order, unless one of the conditions specified in § 265.2(f)(22) (i), (ii), (iii), or (iv) is present.

(46) Under section 4(c)(14) of the Bank Holding Company Act and Subpart C of the Board's Regulation K, to issue a notice of intention not to disapprove a proposed investment in an export trading company if all the following criteria are met:

(i) The proposed export trading company will be a wholly-owned subsidiary of a single investor, or ownership will be shared with an individual or individuals involved in the operation of the export trading company;

(ii) A bank holding company investor and its lead bank meet the minimum capital adequancy guidelines of the Board and the Comptroller of the Currency or have enacted capital enhancement plans that have been determined by the appropriate supervisory authority to be acceptable;

(iii) The proposed export trading company will take title to goods only against firm orders, except that the company may maintain inventory of goods worth up to $2 million;

(iv) The proposed activities of the export trading company do not include product research or design, product modification, or activities not specifically covered by the list of services contained in section 4(c)(14)(F)(ii) of the BHCA Act;

(v) The proposed leveraging ratio of the ETC (assets: capital) does not exceed 10:1, and

(vi) No other significant policy issue is raised on which the Board has not previously expressed its view.

(47) Under section 25(a) of the Federal Reserve Act and Subpart A of the Board's Regulation K, to approve applications by a United States banking organization to establish an Edge corporation if all the following criteria are met:

(i) The U.S. banking organization meets capital adequacy guidelines and is otherwise in satisfactory condition;

(ii) The proposed Edge corporation will be a wholly-owned subsidiary of a single banking organization; and

(iii) No other significant policy issue is raised on which the Board has not previously expressed its view.

(g) The Director of the Division of International Finance (or, in the Director's absence, the Acting Director) is authorized, under the provisions of the sixth paragraph of section 14 of the Federal Reserve Act (12 U.S.C. 358) to approve the establishment of foreign accounts with the Federal Reserve Bank of New York.

(h) The Director of the Division of Consumer and Community Affairs (or, in the Director's absence, the Acting Director) is authorized:

(1) Pursuant to the provisions of section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)), sections 108(b), 621(c), 704(b), 814(c) and 917(b) of the Consumer Credit Protection Act (15 U.S.C. 1607(b), 1681s(c), 1691c(b), 1692l(c), and 1693o(b), section 305(c) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(c)), section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3), section 808(c) of the Civil Rights Act of 1968 (42 U.S.C. 3608(c)), and section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)), to issue examination or inspection manuals, report, agreement, and examination forms, guidelines, instructions or other similar materials, in consultation with the Board's Legal Division where appropriate, for use in connection with:

(i) Sections 1-921 (excluding sections 201-500) of the Consumer Credit Protection Act (15 U.S.C. 1601-1693r).

(ii) Sections 301-312 of the Home Mortgage Disclosure Act (12 U.S.C. 2801-2811).

(iii) Sections 18(f) (1)-(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f) (1)-(3)), and

(iv) Section 805 of the Civil Rights Act of 1968 (42 U.S.C. 3605); and rules and regulations issued thereunder.

(v) Section 1364 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101(a)) and sections 105(b) and 202(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b) and 4106(b)).

(vi) Section 19(j) of the Federal Reserve Act (12 U.S.C. 371b).

(vii) Sections 801-806 of the Community Reinvestment Act (12 U.S.C. 2901-2905).

(2) Pursuant to section 703(b) of the Consumer Protection Act (15 U.S.C. 1691b(b)), to call meetings of and consult with the Consumer Advisory Council established under that section, to approve the agenda for such meetings, and to accept any resignation from Consumer Advisory Council members.

(3) Pursuant to sections 111, 171(a) and 186(a) of the Truth in Lending Act (15 U.S.C. 1610(a), 1666j(a) and 1667e(a)) and the Board's Regulation Z (12 CFR 226.28) and Regulation M (12 CFR 213.7), to determine whether a State law is inconsistent with the Federal act and regulations.

(4) Pursuant to section 919 of the Electronic Fund Transfer Act (15 U.S.C. 1693q) and the Board's Regulation E (12 CFR 205.12), to determine whether a State law is inconsistent with the Federal act and regulation.

(5) Pursuant to section 705(f) of the Equal Credit Opportunity Act (15 U.S.C. 1691d(f)) and the Board's Regulation B (12 CFR 202.11), to determine whether a State law is inconsistent with the Federal act and regulation.

(6) Pursuant to section 306(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2805(a)) and the Board's Regulation C (12 CFR Part 203), to determine whether a State law is inconsistent with the Federal act and regulation.

(12 U.S.C. 3201 et seq.; 248(k), Int'l Banking Act of 1978 (12 U.S.C. 3101 *et seq.*); Federal Reserve Act (12 U.S.C. 226 *et seq.*); Bank Holding Company Act (12 U.S.C. 1842 *et seq.*); change in Bank Control Act (12 U.S.C. 1817(j)); sec. 11(k) of the Federal Reserve Act; secs. 3(a), 4(c)(8) and 5(b) of the Bank Holding Company Act and sec. 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c)))

[32 FR 8519, June 14, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 265.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 265.3 Review of action at delegated level.

Any action taken at a delegated level shall be subject to review by the Board only if such review is requested by a member of the Board either on the member's own initiative or on the basis of a petition for review by any person claiming to be adversely affected by the action. Any such petition for review must be received by the Secretary of the Board not later than the fifth day after the date of such action. Notice of any such review shall be given to the person with respect to whom such action was taken and be received by such person not later than the close of the tenth day following the date of such action. Upon receipt of such notice, such person shall not proceed further in reliance upon such action until such person is notified of the outcome of review thereof.

[32 FR 8519, June 14, 1967; 32 FR 8956, June 23, 1967, as amended at 41 FR 53776, Dec. 9, 1976; 42 FR 2501, Jan. 12, 1977]

PART 266—LIMITATIONS ON ACTIVITIES OF FORMER MEMBERS AND EMPLOYEES OF THE BOARD

Sec.
266.1 Basis and scope.
266.2 Definitions.
266.3 Limitations.
266.4 Suspension of appearance privilege.
266.5 Criminal penalties.

AUTHORITY: Sec. 11(i), Federal Reserve Act (12 U.S.C. 248(i)) (5 U.S.C. 552).

SOURCE: 38 FR 31672, Nov. 16, 1973, unless otherwise noted.

§ 266.1 Basis and scope.

This part, issued under authority of section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)), and pursuant to section 552 of Title 5 of the United States Code, which requires that every agency shall publish in the FEDERAL REGISTER its rules of procedure, relates to limitations on former members and employees of the Board with respect to participation in matters connected with their former duties and official responsibilities while serving with the Board.[1]

§ 266.2 Definitions.

(a) "Employee" means a regular officer or employee of the Board; it does not include a consultant to the Board.[2]

(b) "Official responsibility," with respect to a matter, means administrative, supervisory, or decisional authority, whether intermediate or final, exercisable alone or with others, personally or through subordinates, to approve, disapprove, decide, or recommend Board action or to express staff opinions in dealings with the public.

(c) "Appear personally" includes personal appearance or attendance before, or personal communication, either written or oral, with the Board or a Federal Reserve Bank of any member or employee thereof, or personal participation in the formulation or preparation of any material presented or communicated to, or filed with, the Board, in connection with any application or interpretation arising under the statutes or regulations administered by the Board or the Federal Reserve Banks, except that requests for general information or explanations of Board policy or interpretation shall not be construed to be a personal appearance.

§ 266.3 Limitations.

(a) *Matters on which Board member or employee worked.* No former member or employee of the Board shall appear personally before the Board or a Federal Reserve Bank on behalf of anyone other than the United States, an agency thereof, or a Federal Reserve Bank, in connection with any judicial or other proceedings, application, request for ruling or determination, or other particular matter involving a specific party or parties in which the United States, an agency thereof, or a Federal Reserve Bank is also a party or has a direct and substantial interest and in which he participated personally and substantially as a member or employee of the Board through approval, disapproval, decision, recommendation, advice, investigation or otherwise.

(b) *Matters within Board member or employee's official responsibility.* No former member or employee of the Board shall appear personally before the Board or a Federal Reserve Bank on behalf of anyone other than the United States, an agency thereof, or a Federal Reserve Bank, in connection with any judicial or other proceeding, application, request for ruling or determination, or other particular matter involving a specific party or parties in which the United States, an agency thereof, or a Federal Reserve Bank is also a party or has a direct and substantial interest, and which matter was in process during his tenure of office or period of employment and under his official Board responsibility, at any time within a period of one year after the termination of such responsibility.

(c) *Consultation as to propriety of appearance before the Board.* Any former member or employee of the Board who wishes to personally appear before the Board or a Federal Reserve Bank on behalf of any party other than the United States or an agency thereof or a Federal Reserve Bank at any time within two years from termination of employment with the Board is advised to consult the General Counsel or the Secretary of the Board as to the propriety of such appearance.

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[1] While the Board has not adopted rules with regard to the disclosure of unpublished information by former Board members and employees, it advises such persons not to disclose unpublished information of the Board obtained in the course of their work. Questions in this regard may be addressed to the General Counsel or the Secretary of the Board.

[2] While former consultants to the Board are not covered by these Rules, they appear to fall within the coverage of section 207 of the United States Criminal Code (18 U.S.C. 207) that provides criminal penalties for engaging in activities similar, although not identical, to those described in paragraphs (a) and (b) of § 266.3.

(d) *Rulemaking proceedings.* Nothing in this section shall preclude a former member or employee of the Board from representing another person in any Board or Federal Reserve Bank proceeding governed by a rule, regulation, standard, or policy of the Board solely by reason of the fact that such former member or employee participated in or had official responsibility in the formation or adoption of such rule, regulation, standard, or policy.

(e) *Effective date.* This part shall become effective November 6, 1973. Notwithstanding the foregoing, the limitations of this part shall not apply to any activities with respect to a specific matter before the Board in which any former Board member or employee may be engaged on September 21, 1973, the date of publication of this part, until the expiration of 60 days following the effective date of this part or of such additional period as the Secretary of the Board may determine to be appropriate in order to avoid inequity.

§ 266.4 Suspension of appearance privilege.

If any person knowingly and willfully fails to comply with the provisions of this part, the Board may decline to permit such person to appear personally before it or a Federal Reserve Bank for such periods of time as it may determine and may impose such other sanctions as the Board may deem just and proper.

§ 266.5 Criminal penalties.

Any former member or employee of the Board who engages in actions in contravention of paragraph (a) or (b) of § 266.3 may be subject to criminal penalties for violation of section 207 of the United States Criminal Code (18 U.S.C. 207).

PART 267—RULES OF ORGANIZATION AND PROCEDURE OF THE CONSUMER ADVISORY COUNCIL

Sec.

267.1 Statutory authority.
267.2 Purposes and objectives of the Council.
267.3 Members.
267.4 Officers.
267.5 Meetings.
267.6 Amendments.

Authority: Sec. 703, Equal Credit Opportunity Act, as amended in Pub. L. 94-239.

Source: 41 FR 49802, Nov. 11, 1976, unless otherwise noted.

§ 267.1 Statutory authority.

Section 703 of the Equal Credit Opportunity Act, as amended, provides:

> The Board [of Governors of the Federal Reserve System] shall establish a Consumer Advisory Council to advise and consult with it in the exercise of its functions under the Consumer Credit Protection Act and to advise and consult with it concerning other consumer related matters it may place before the Council. In appointing the members of the Council, the Board shall seek to achieve a fair representation of the interests of creditors and consumers. The Council shall meet from time to time at the call of the Board. Members of the Council who are not regular full-time employees of the United States shall, while attending meetings of such Council, be entitled to receive compensation at a rate fixed by the Board, but not exceeding $100 per day, including travel time. Such members may be allowed travel expenses, including transportation and subsistence, while away from their homes or regular place of business.

§ 267.2 Purposes and objectives of the Council.

The Council shall advise and consult with the Board in the exercise of the Board's functions under the Consumer Credit Protection Act and with regard to other matters the Board may place before the Council.

§ 267.3 Members.

(a) The Council shall consist of not more than 30 members appointed by the Board. The term of office of each member of the Council shall be three years. However, the initial terms of the members first taking office shall expire as follows: approximately one-third on December 31, 1977, and approximately one-third at the end of each of the two succeeding calendar years. After the expiration of any member's term of office, such member may continue to serve until a successor has been appointed by the Board. The Board shall have the authority to appoint persons to fill vacancies on the Council.

(b) *Resignation.* Any member may resign at any time by giving notice to the Board. Any such resignation shall take effect upon its acceptance by the Board.

(c) *Compensation.* Members who are not regular full-time employees of the United States shall be paid travel expenses, including transportation and subsistence, and compensation of $100 for each day devoted to attending and traveling to and from meetings.

§ 267.4 Officers.

(a) *Chairman.* The Board shall appoint a Chairman and a Vice Chairman from among the members of the Council, who shall serve at the pleasure of the Board. The Chairman, or in the Chairman's absence the Vice Chairman, shall preside at all meetings of the Council. The Board may appoint a Chairman pro tem who shall preside at a meeting of the Council in the absence of the Chairman and Vice Chairman.

(b) *Secretary.* The Board shall designate a member of its staff, who may but need not be the representative described in § 267.5(c), to act as Secretary of the Council. The Secretary shall record and maintain minutes of the meetings of the Council. Minutes of each meeting shall contain, among other things, a record of the persons present, a description of the matters discussed, and recommendations made. The person acting as Secretary at a meeting shall certify to the accuracy of the minutes of that meeting.

§ 267.5 Meetings.

(a) *Time.* Meetings of the Council shall be held at least once each year and may be held more frequently at the call of the Board.

(b) *Agenda.* Each meeting of the Council shall be conducted in accordance with an agenda formulated or approved by the Board.

(c) *Board representation.* Each meeting of the Council shall be attended by a representative of the Board who is either a member of the Board or of the Board's staff. The Board representative shall have authority to and shall adjourn any meeting of the Council when such representative considers adjournment to be in the public interest.

(d) *Public nature.* (1) Each meeting of the Council shall, to the extent of reasonably available facilities, be open to public observation unless the Board, in accordance with paragraph (d)(6), of this section, determines that the meeting shall be closed.

(2) Notice of the time, place and purpose of each meeting, as well as a summary of the proposed agenda, shall be published in the FEDERAL REGISTER not more than 45 or less than 15 days prior to the scheduled meeting date. Insofar as is practicable, a list of persons and organizations interested in the Council shall be maintained, and a notice of each meeting shall be mailed to such persons and organizations at least 15 days in advance of the scheduled meeting date. Shorter notice may be given when the Board determines that its business so requires; in such event, the public, including persons and organizations described in the preceding sentence, will be given notice at the earliest practicable time.

(3) Members of the public may file written statements with the Council prior to the meeting concerning matters on the Council's agenda. The person presiding at the Council meeting may permit members of the public to submit written statements on such matters within a specified time after the Council meeting. All such submissions shall be circulated to the Council members as soon as is practicable.

(4) Oral presentations at the Council meetings by members of the public shall not be permitted except upon invitation of the Council. However, if the Council and the Board determine that public hearings regarding a matter or matters of concern to the Council are warranted, members of the public may make presentations at

such hearings in accordance with procedures established therefor.

(5) Minutes of meetings, records, reports, studies, and agenda of the Council shall be available to the public for copying at the Board's offices in Washington, D.C., in accordance with the provisions of 12 CFR Part 261 Rules Regarding Availability of Information. Requests for copies of such documents should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

(6) The Board may close to the public any meeting, or any portion of any meeting, of the Council if it determines that such meeting or portion thereof is likely to:

(i) Disclose matters that relate solely to internal personnel rules and practices of the Council;

(ii) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(iii) Involve accusing any person of a crime, or formally censuring any person;

(iv) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(v) Disclose information contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(vi) Disclose information the premature disclosure of which would be likely to lead to significant financial speculation in currencies, securities, or commodities or significantly endanger the stability of any financial institution;

(vii) Disclose information the premature disclosure of which would be likely to frustrate significantly implementation of a proposed Board action, unless the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on the proposal; or

(viii) Which relate to any legal proceedings, agency adjudicatory proceeding or arbitration involving the Board or the Council.

(e) If the Board closes a meeting or any portion of a meeting, the Council will issue, at least annually, a report containing a summary, consistent with 5 U.S.C. 552(b) (1970), of the Council's activities during such closed meetings or portions of meetings.

§ 267.6 Amendments.

These rules of organization and procedure may be amended or repealed at any time by action of the Board, provided, however, that members of the Council shall be promptly notified by the Board of any such action.

PART 268—RULES REGARDING EQUAL OPPORTUNITY

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AUTHORITY: Secs. 10(4) and 11(*l*) of the Federal Reserve Act (partially codified in 12 U.S.C. 244 and 248(*l*)).

SOURCE: 50 FR 18780, May 2, 1985, unless otherwise noted.

Subpart A—General Provisions

§ 268.101 Authority, purpose, and scope.

(a) *Authority.* This regulation (Code of Federal Regulations, Title 12, Part 268) is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of sections 10(4) and 11(*l*) of the Federal Reserve Act (partially codified in 12 U.S.C. 244 and 248(*l*)).

(b) *Purpose and scope.* This regulation sets forth the Board's policy, program, and procedures for providing equal opportunity to Board employees and applicants for employment without regard to race, color, religion, sex, national origin, age, or physical or mental handicap. It also sets forth the

Board's policy, program, and procedures for prohibiting discrimination on the basis of physical or mental handicap in programs and activities conducted by the Board.

§ 268.102 Board program.

The Board has established, maintains, and carries out a continuing affirmative program designed to promote equal opportunity in every aspect of the Board's personnel policies and practices in the employment, development, advancement, and treatment of employees and applicants for employment. Under the terms of its program, the Board:

(a) Provides sufficient resources to administer its equal opportunity program in a positive and effective manner and assure that the principal and operating officials responsible for carrying out the equal opportunity program meet established qualifications requirements;

(b) Seeks to eradicate every form of prejudice or discrimination based upon race, color, religion, sex, national origin, age, or physical or mental handicap, from the Board's personnel policies and practices and working conditions;

(c) Provides the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work study programs, and other training programs so that they may perform at their highest potential and advance in accordance with their abilities;

(d) Communicates the Board's equal opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, age, or physical or mental handicap, and solicits their recruitment assistance on a continuing basis;

(e) Participates at the community level with other employers, schools, universities, and other public and private groups in cooperative action to improve employment opportunities;

(f) Reviews, evaluates, and controls managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provides orientation, training, and advice to managers and supervisors to assure their understanding and implementation of the equal opportunity policy and program;

(g) Provides recognition to employees, supervisors, managers, and units demonstrating superior accomplishment in equal opportunity;

(h) Informs its employees and applicants for employment of the Board's affirmative equal opportunity policy and program and enlists their cooperation;

(i) Provides counseling for employees and applicants for employment who believe they have been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental handicap, and for resolving informally the matters raised by them;

(j) Provides for the prompt, fair, and impartial consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, national origin, age, or physical or mental handicap;

(k) Has established a system for periodically evaluating the effectiveness of the Board's overall equal opportunity effort;

(l) Makes reasonable accommodations to the religious needs of employees and applicants for employment, including the needs of those who observe the Sabbath on other than Sunday, when those accommodations can be made (by substitution of another qualified employee, by a grant of leave, a change of a tour of duty, or other means) without undue hardship on the business of the Board;

(m) Utilizes to the fullest extent the present skills of employees by all means, including the redesigning of jobs where feasible so that tasks not requiring the full utilization of skills of incumbents are concentrated in jobs with lower skill requirements; and

(n) Prepares annually equal opportunity plans of action which include, but are not limited to:

(1) Provision for the establishment of training and education programs designed to provide maximum opportunity for employees to advance so as to perform at their highest potential;

(2) describes the qualifications, in terms of training and experience relating to equal opportunity, of the principal and operating officials concerned with administration of the Board's equal opportunity program; and

(3) describes the allocation of personnel and resources proposed by the Board to carry out its equal opportunity program.

§ 268.103 Definitions.

(a) "Age" is an inclusive term which means the age of at least forty years.

(b) "Complainant" means any party who files a claim, complaint, or request for counseling under this regulation.

(c) "Complaint of discrimination" means any claim or complaint filed under this regulation or the Board's grievance procedures alleging discrimination in employment because of race, color, national origin, religion, sex, age, or physical or mental handicap.

(d) "Grievance procedures" means the Board's Adjusting Work-related Problems Policy.

Subpart B—Administration

§ 268.201 Equal employment designations.

The Board designates an EEO Programs Officer, an EEO Officer, a Federal Women's Program Manager, a Hispanic Program Coordinator, a Handicapped Program Coordinator, and such EEO Counselors and other persons as may be necessary to assist the Board in carrying out the functions described in this Regulation.

§ 268.202 The Administrative Governor.

(a) The Administrative Governor is a member of the Board of Governors. He or she is designated by the Chairman of the Board of Governors, charged with overseeing the internal affairs of the Board and empowered to make decisions and determinations on behalf of the Board of Governors when authority to do so is delegated to him or her.

(b) The Administrative Governor is hereby delegated the authority to make determinations adjudicating complaints of discrimination pursuant to §§ 268.311, 268.412, and 268.711(k) of this Regulation. The Administrative Governor is further delegated the authority to order such corrective measures, including such remedial actions as may be required by §§ 268.315, 268.412(c), 268.414(a), and 268.711(k) of this Regulation, as he or she may consider necessary, including such disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice.

(c) The Administrative Governor may delegate to any officer or employee of the Board any of his or her duties or functions under this Regulation.

(d) The Administrative Governor may refer to the Board of Governors for determination or decision any complaint of discrimination that the Administrative Governor would otherwise decide pursuant to §§ 268.311, 268.412, and 268.711(k) of this Regulation, and may make any recommendations for any changes in programs and procedures designed to eliminate discriminatory practices or to improve the Board's programs under this Regulation, and may make any recommendations for remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities, or employees who have been found to have engaged in discriminartory practices, or with regard to any other matter which the Administrative Governor believes merits the attention of the Board of Governors.

§ 268.203 The Staff Director for Management.

(a) When so authorized by the Administrative Governor, the Staff Director for Management shall make any determinations on complaints of discrimination that would otherwise be made by the Administrative Governor under §§ 268.311 and 268.412. The Staff Director for Management shall issue letters of findings under § 268.711(g). The Staff Director For Management shall order such corrective measures, including such remedial actions as may be required by §§ 268.315, 268.412(c), 268.414(a), and 268.711(h) as he or she may consider necessary, and including the recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice.

(b) The Staff Director for Management shall review the record on any complaint under this Regulation before a determination is made by the Board of Governors or the Administrative Governor on the complaint and make such recommendations as to the determination as he or she considers desirable, including any recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice.

(c) The Staff Director for Management may make changes in programs and procedures designed to eliminate discriminatory practices and improve the Board's program for equal opportunity.

§ 268.204 The EEO Programs Officer.

The EEO Programs Officer shall perform the following functions:

(a) Advise the Board, the Administrative Governor, and the Staff Director for Management with respect to the preparation of plans, goals, objectives, procedures, regulations, reports, and other matters pertaining to the Board's program established under § 268.102, and administer the Board's equal opportunity program;

(b) Evaluate from time to time the sufficiency of the Board's program for equal opportunity and report thereon to the Board, the Administrative Governor, and the Staff Director For Management, with recommendations as to any improvement or correction needed, and may make recommendations regarding remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities;

(c) Recommend changes in programs and procedures designed to eliminate discriminatory practices and improve the Board's program for equal opportunity;

(d) Provide for counseling by an EEO Counselor, of any aggrieved employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental handicap, and for attempting to resolve on an informal basis the matter raised by the employee or applicant before a complaint of discrimination may be filed under §§ 268.302 and 268.403 of the regulation;

(e) Publicize to Board employees and applicants for employment and post permanently on official bulletin boards:

(1) The names and office addresses and the EEO responsibilities of the Staff Director For Management, the EEO Programs Officer, the Federal Women's Program Manager, the EEO Officer, the Hispanic Program Coordinator, and the Handicapped Program Coordinator;

(2) The names and office addresses of EEO Counselors, the segments of the Board for which they are responsible, the availability of EEO Counselors to counsel an employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental handicap; and the requirement that an employee or applicant for employment must consult the EEO Counselor as provided by §§ 268.301 and 268.402; and

(3) Time limits for contacting EEO Counselors;

(f) Provide to each employee annually (and the Division of Personnel shall provide to each applicant for employment) a copy of a notice summarizing the general purposes of this Regulation and specifying where copies of this Regulation can be obtained. The EEO Programs Officer shall ensure that copies of this Regulation are posted in permanent locations in all Board facilities. The EEO Programs Officer shall, on the request of any employee or applicant for employment provide that employee or applicant with a copy of this Regulation;

(g) Appoint any investigative officers or complaints examiners as necessary to administer this Regulation. The EEO Programs Officer is authorized to request the loan of any investigative officers or complaints examiners from any other agency as necessary to administer this Regulation. The EEO

Programs Officer, with the concurrence of the Staff Director For Management, may authorize appropriate reimbursement to such agencies for the services of such investigative officers and complaints examiners;

(h) Provide for the receipt and investigation of individual complaints of discrimination, subject to §§ 268.301 through 268.312; and

(i) Provide for the acceptance and processing and/or rejection of class action complaints in accordance with Subpart D of this regulation.

§ 268.205 Federal Women's Program Manager.

The Federal Women's Program Manager shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director For Management, and the EEO Programs Officer on matters affecting, and administer the Board's program with respect to, the employment and advancement of women.

§ 268.206 Hispanic Program Coordinator.

The Hispanic Program Coordinator shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director For Management, and the EEO Programs Officer on matters affecting, and administer the Board's program with respect to, the employment and advancement of Hispanics.

§ 268.207 Handicapped Program Coordinator.

The Handicapped Program Coordinator shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director For Management, and the EEO Programs Officer on matters affecting, and administer the Board's program with respect to, the employment and advancement of handicapped persons.

Subpart C—Complaints of Discrimination on Grounds of Race, Color, Religion, Sex, National Origin, Age, or Physical or Mental Handicap

§ 268.301 Precomplaint processing.

(a) An aggrieved person who believes he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or physical or mental handicap, shall consult with an EEO Counselor to try and resolve the matter. The EEO Counselor shall make whatever inquiry he or she believes is necessary into the matter and seek a solution to the matter on an informal basis. The EEO Counselor shall advise the aggrieved person of the complaint procedure under this subpart, counsel him or her concerning the issues in the matter, keep a record of the counseling activities so as to brief the EEO Officer on those activities, and when advised that a formal complaint of discrimination has been filed by an aggrieved person, shall submit a written report to the EEO Officer with a copy to the aggrieved person summarizing the EEO Counselor's actions and advice to the aggrieved person concerning the issues in the matter. The EEO Counselor shall, insofar as is practicable, conduct the final interview of the aggrieved person not later than 21 calendar days after the date on which the matter was called to the EEO Counselor's attention by the aggrieved person. If, within 21 calendar days, the matter has not been resolved to the satisfaction of the aggrieved person, that person shall be immediately informed in writing, at the time of the final interview, of his or her right to file a complaint of discrimination and of his or her right to representation, including legal counsel. The notice shall inform the aggrieved person of his or her right to file a discrimination complaint at any time up to 15 calendar days after receipt of the said notice, identify to the aggrieved person the officials with whom such complaint may be filed, and advise the aggrieved person that he or she must inform the Board immediately if he or she retains counsel or any other representative in connection with the complaint.

(b) The EEO Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint.

(c) The EEO Counselor shall not reveal the identity of any aggrieved person who consults with the EEO Counselor, except when authorized to do so by the aggrieved person, or until the Board has accepted a complaint of discrimination from the aggrieved person.

(d) The EEO Counselor shall have the full cooperation of all employees in the performance of his or her duties under this section.

(e) The EEO Counselor shall be free from restraint, interference, coercion, discrimination or reprisal, in connection with the performance of his or her duties under this section.

§ 268.302 Filing of complaint.

(a) *Time limits.* (1) The Board shall accept a complaint for processing under this subpart only if:

(i) The complainant brought to the attention of an EEO Counselor the matter causing him or her to believe he or she had been discriminated against within 30 calendar days of the date of the matter or, if a personnel action, within 30 calendar days of its effective date; and

(ii) The complainant, or his or her authorized representative, submitted his or her written complaint to an appropriate official within 15 calendar days of the date of his or her final interview with the EEO Counselor.

(2) A complaint shall be deemed to have been filed on the date it was received, if delivered to an appropriate official, or on the date postmarked if addressed to an appropriate official designated to receive complaints under paragraph (b)(3) of this section.

(b) *Filing requirements.* (1) A complaint of discrimination must be submitted in writing by the complainant, or his or her authorized representative, and must be signed by the complainant.

(2) A complaint of discrimination may be submitted in person or by mail. If a complainant, or his or her authorized representative, submits the complaint by mail, use of registered mail is advised.

(3) The complaint shall be submitted to either the Administrative Governor, the Staff Director For Management, the EEO Programs Officer, the EEO Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coordinator. All complaints received by the Administrative Governor, the Staff Director For Management, the EEO Programs Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coodinator shall be transmitted to the EEO Officer for acknowledgment of receipt in accordance with § 268.302(c)(1).

(c) *Acknowledgement of receipt of complaint.*

(1) The EEO Officer shall acknowledge receipt of the complaint to the complainant, or his or her authorized representative, in writing.

(2) The EEO Officer shall advise the complainant, or his or her authorized representative, of all administrative rights of the complainant and of complainant's right to file a civil action as set forth in § 268.316, including the time limits imposed on the exercise of those rights.

(d) *Extensions of time.* (1) The EEO Programs Officer shall extend the time limits set forth in this section:

(i) On written request of the complainant, or his or her authorized representative, when the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or that he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits; or

(ii) For other reasons considered sufficient by the EEO Programs Officer.

(2) Written requests for extension of time under this section shall be filed with the EEO Programs Officer.

§ 268.303 Right to representation.

At any stage in the presentation of a complaint under this subpart, including the counseling stage under § 268.301, the complainant shall have the right to be accompanied, represented, and advised by a representative, including legal counsel, of his or her choice. Complainant shall be advised of this right in writing by the EEO Counselor or other appropriate person responsible for matters under this regulation at the commencement of processing of any matter subject to this regulation.

§ 268.304 Presentation of the complaint.

(a) If the complainant is an employee of the Board, he or she shall have a reasonable amount of official time to present his or her complaint, if he or she is otherwise in an active duty status.

(b) If the complainant is an employee of the Board and the complainant designates another employee of the Board as his or her representative, the representative shall have a reasonable amount of official time, if he or she is otherwise in an active duty status, to present the complaint.

§ 268.305 Rejection or cancellation of the complaint.

(a) The EEO Programs Officer shall reject a complaint which was not timely filed under § 268.302(a), unless the time for filing has been extended pursuant to § 268.302(d), and shall reject those allegations in a complaint which are not within the purview of this regulation or which set forth identical matters as contained in a previous complaint filed by the same complainant which is pending at the Board or has been decided by the Board. The EEO Programs Officer may cancel a complaint for failure of the complainant to prosecute the complaint. Such action canceling a complaint may be taken only after the EEO Programs Officer has provided the complainant, or his or her authorized representative, a written request, including notice of proposed cancellation, that the complainant provide certain information or otherwise proceed with the complaint, and the complainant has failed to satisfy this request within 15 calendar days of his or her receipt of the request.

(b) The EEO Programs Officer shall transmit any decision to reject or cancel by letter to the complainant, or his or her authorized representative. The decision letter shall inform the complainant of his or her right to have the decision of the EEO Programs Officer submitted to the Equal Employment Opportunity Commission for review as described in Subpart H and of his or her right to file a civil action as described in § 218.316 of this subpart, and of the time limits applicable thereto.

§ 268.306 Investigation.

(a) The EEO Officer shall advise the EEO Programs Officer of the receipt of a complaint. The EEO Programs Officer shall provide for the prompt investigation of the complaint. The EEO Programs Officer shall appoint an investigative officer to investigate the complaint. The investigative officer, if an employee of the Board, shall occupy a position which is not, directly or indirectly, under the jurisdiction of the Director of the Division or Office of the Board in which the complaint arose. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his or her complaint as compared with the treatment of other employees or applicants for employment in the Board Division or Office in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute or appear to constitute discrimination, even though they have not been expressly cited by the complainant. Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informed decision on the complaint shall, if available, be recorded by name in the investigative file. (As used in this subpart, the term "investigative file" shall mean the various documents and information acquired during the investigation under this section—including affidavits of the complainant, of the alleged discriminating official, and of witnesses, and copies of or extracts from records, policy statements, or regulations of the Board—organized to show their relevance to the complaint or the general environment out of which the complaint arose.) If necessary, the investigative officer may obtain information regarding the membership or nonmembership of a person in the complainant's group by asking each person concerned to provide the information voluntarily; he or she shall not require or coerce an employee to provide this information.

(b) The investigative officer shall be authorized:

(1) To investigate all aspects of complaints of discrimination;

(2) To request all employees of the Board to cooperate with him or her in the conduct of the investigation; and

(3) To require that statements of witnesses be under oath or affirmation without a pledge of confidence.

§ 268.307 Adjustment of complaint and offer of hearing.

(a) The Board shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file. For this purpose, the EEO Officer shall furnish complainant, or his or her authorized representative, with a copy of the investigative file promptly after receiving it from the investigative officer, and shall provide an opportunity for the complainant, or his or her authorized representative, to discuss the investigative file with appropriate officials.

(b) If an adjustment of the complaint is arrived at and approved, the terms of the adjustment shall be reduced to writing and made a part of the complaint file, with a copy of the terms of the adjustment provided to the complainant. An informal adjustment of a complaint may include an award of backpay, attorney's fees and/or costs, if appropriate, or other appropriate relief. Where the parties agree on an adjustment of the complaint, but cannot agree on whether attorney's fees and/or costs should be awarded or on the amount of attorney's fees and/or costs to be awarded, the issue of the award of attorney's fees and/or costs or the amount which should be awarded may be severed and shall be the subject of a final decision pursuant to § 268.311. The decision of whether to award attorney's fees and/or costs or of the amount to be awarded may be submitted for review by the Equal Employment Opportunity Commission, pursuant to subpart H of this Regulation.

(c) If the Board does not carry out, or rescinds any action specified by the terms of the adjustment for any reason not attributable to the actions or conduct of the complainant, the EEO Officer shall, upon the complainant's written request, reinstate the complaint for further processing at the point that processing ceased because of the adjustment.

(d) If an adjustment of the complaint is not arrived at, the complainant shall be notified in writing by the EEO Officer:

(1) Of the proposed disposition of the complaint;

(2) Of the complainant's right to a hearing and decision by the Board of Governors or the Administrative Governor under § 268.311, or the Staff Director For Management if he or she is delegated the authority under § 268.202(c), if the complainant notifies the EEO Officer in writing within 15 calendar days of receipt of the notice that he or she desires a hearing; and

(3) Of the complainant's right to a decision by the Board of Governors or the Administrative Governor under § 368.311, or the Staff Director For Management if he or she is delegated the authority under § 268.202(c), without a hearing.

(e) If the complainant fails to notify the EEO Officer of his or her wishes within 15 calendar days of receipt of the notice set forth in § 268.307(d), the EEO Officer shall transmit the complaint file to the Board of Governors or the Administrative Governor, or to the Staff Director For Management if he or she has been authorized to act for the Administrative Governor pursuant to § 268.202(c), for decision under § 268.311.

§ 268.308 Hearing on the complaint.

A hearing, held pursuant to an election by the complainant as provided in § 268.307(d)(2), shall be conducted in the following manner:

(a) *Complaints examiner.* The hearing shall be held by a complaints examiner, who must be an employee of another agency, except in a case where the Board might be prevented by reason of law from divulging information concerning the matter complained of to a person who has not received a required security clearance. In that event, the EEO Programs Officer, in consultation with the Equal Employment Opportunity Commission, shall select an impartial employee of the Board to serve as a complaints examiner. In selecting a complaints examiner, the Board shall request the Equal Employment Opportunity Commission to supply the name of a complaints examiner who has been certified by the Commission as qualified to conduct a hearing under this section.

(b) *Arrangements for hearing.* The EEO Officer shall transmit to the complaints examiner the complaint file containing all the documents described in § 268.312 that have been acquired up to that point in the processing of the complaint and including the original copy of the investigative file (which shall be considered by the complaints examiner in making his or her recommended decision on the complaint). The complaints examiner shall review the entire complaint file to determine whether further investigation is needed before scheduling the hearing. When the complaints examiner determines that further investigation is needed, he or she shall remand the complaint to the Board's EEO Officer for further investigation or arrange for the appearance of witnesses necessary to supply the needed additional information at the hearing. The requirements of § 268.306 shall apply to any further investigation of the complaint. The complaints examiner shall schedule the hearing at a convenient time and place.

(c) *Conduct of hearing.* (1) Attendance at the hearing shall be limited to persons determined by the complaints examiner to have direct connection with the complaint.

(2) The complaints examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the complaints examiner shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or employment policy or practices relevant to the complaint shall be received in evidence. The complaints examiner, the complainant, his or her authorized representative, and representatives of the Board at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(d) *Powers of complaints examiner.* In addition to the other powers vested in the complaints examiner by the Board in this Regulation, the complaints examiner shall be authorized to:

(1) Administer oaths or affirmations;

(2) Regulate the course of the hearing;

(3) Rule on offers of proof;

(4) Limit the number of witnesses whose testimony would be unduly repetitious; and

(5) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.

(e) *Witnesses at hearing.* The complaints examiner shall request the Board or any agency that is subject to the authority of an Equal Employment Opportunity Commission complaints examiner to make available as a witness at the hearing any employee(s) requested by the complainant when the complaints examiner determines that the testimony of such employee(s) is necessary. He or she may also request the appearance of any other person whose testimony he or she determines is necessary to furnish information pertinent to the complaint under consideration. The complaints examiner shall give the complainant his or her reasons for the denial of a request for the appearance of employees or other persons as witnesses and shall insert those reasons in the record of the hearing. The Board or any agency that is subject to the authority of an Equal Employment Opportunity Commission complaints examiner may make its employees available as witnesses at a hearing on a complaint when requested to do so by the complaints examiner and it is not administratively impracticable to comply with the request for a witness. When it is administratively impracticable to comply with the request for a witness, the Board or other agency shall provide an explanation to the complaints examiner. If the complaints examiner determines that the explanation is inadequate, he or she shall so advise the Board or other agency and request it to make the employee available as a witness at the hearing. If the complaints examiner determines that the explanation is adequate, he or she shall insert it in the record of the hearing, provide a copy of the explanation to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory. Employees of the Board shall be on duty status during the time they are made available as witnesses.

(f) *Record of hearing.* The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by, the complaints examiner at the hearing shall be made part of the record of the hearing. If the Board submits a document that is accepted, the Board shall promptly furnish a copy to the complainant. If the complainant submits a document that is accepted, he or she shall promptly make the document available to the Board's representative for reproduction.

(g) *Findings, analysis, and recommendations.* The complaints examiner shall transmit to the EEO Programs Officer:

(1) The complaint file (including the record of the hearing);

(2) The findings and analysis of the complaints examiner with regard to the matter that gave rise to the complaint and the general environment out of which the complaint arose;

(3) The recommended decision of the complaints examiner on the merits of the complaint, including recommended remedial action, where appropriate, with regard to the matter that gave rise to the complaint and the general environment out of which the complaint arose.

The complaints examiner shall notify the complainant of the date on which this was done. In addition, the complaints examiner shall transmit, by separate letter to the EEO Programs Officer, any findings and recommendations he or she considers appropriate with respect to conditions at the Board which do not bear directly on the matter which gave rise to the complaint or which bear on the general environment out of which the complaint arose.

§ 268.309 Relationship to other agency appellate procedure.

When an employee or applicant for employment makes a written allegation of discrimination on grounds of race, color, religion, sex, national origin, age, or physical or mental handicap, in connection with an action that would otherwise be processed under a grievance procedure or other system of the Board, the allegation of discrimination shall be processed under this Regulation.

§ 268.310 Avoidance of delay.

(a) The complaint shall be resolved promptly. To this end, both the complainant and the Board shall proceed with the complaint as specified in this Regulation without undue delay so that the complaint is resolved within 180 calendar days after it was filed, including time spent in the processing of the complaint by the complaints examiner under § 268.308. When the complaint has not been resolved within such time, the complainant may petition the Staff Director For Management for a review of the reasons for the delay.

(b) The EEO Programs Officer may cancel a complaint if the complainant fails to prosecute the complaint without undue delay. Such action may be taken only after the EEO Programs Officer has provided the complainant, or his or her authorized representative, with a written request, including notice of the proposed cancellation, that the complainant provide certain information or otherwise proceed with the complaint, and the complainant has failed to satisfy this request within 15 calendar days of receipt by the complainant, or his or her authorized representative, of this request. However, instead of cancelling for failure to prosecute, the complaint may be adjudicated if sufficient information for that purpose is available.

(c) When the complaints examiner has submitted a recommended decision finding discrimination and a final decision has not been issued by the Board of Governors or the Administrative Governor under § 268.311, or by the Staff Director For Management if he or she is delegated the authority to act for the Administrative Governor pursuant to § 268.202(c), within 180 calendar days after the date the complaint was filed, the complaints examiner's recommended decision shall become a final decision binding on the Board 30 calendar days after its submission to the EEO Programs Officer. In such event, the complainant shall be notified of the decision and furnished a copy of the findings, analysis, recommended decision of the complaints examiner under § 268.308(g), and a copy of the hearing record and shall be advised that at the complainant's request the decision may be reviewed by the Equal Employment Opportunity Commission pursuant to Subpart H of this part, of his or her right to file a civil action as described in § 268.316 of this regulation, and of the time limits applicable thereto.

§ 268.311 Decision on the complaint.

(a) The EEO Programs Officer shall notify the Board of Governors when the complaint is ripe for decision under this section. At the request of any member of the Board of Governors made within 7 calendar days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director For Management if he or she is delegated the authority to do so under § 268.202(c), shall make the decision on the complaint. The decision on the complaint shall be made based on information in the complaint file and shall be made in a fair, impartial, and objective manner.

(b)(1) The decision on the complaint shall be in writing, shall reflect the date of issuance, and shall be transmitted to the complainant, or his or her authorized representative, either by certified mail, return receipt requested, or by any other method which establishes the date of receipt by the complainant, or his or her authorized representative.

(2) When there has been a hearing on the complaint, the decision letter shall transmit a copy of the findings, analysis, and recommended decision of the complaints examiner under § 268.308(g) of this subpart and a copy of the hearing record. The decision shall adopt, reject, or modify the recommended decision of the complaints examiner under § 268.308(g). If the decision is to reject or modify the recommended decision, the decision letter shall set forth the specific reasons in detail for rejection or modification.

(3) When there has been no hearing under § 268.308 and no adjustment under § 268.307, the decision letter shall set forth the findings, analysis, and decision of the Board of Governors or the Administrative Governor under paragraph (a) of this section, or of the Staff Director For Management if he or she has been delegated the authority to make the decision under § 268.202(c).

(c) The decision shall require any remedial action authorized by law and determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the decision maker shall:

(1) Advise the complainant, or his or her authorized representative, that any request for attorney's fees and/or costs must be documented and submitted within 20 calendar days of receipt;

(2) Require remedial action to be taken in accordance with § 268.315;

(3) Review the matter giving rise to the complaint to determine whether disciplinary action against any alleged discriminatory officials is appropriate; and

(4) Record the basis for his or her decision to take, or not to take, disci-

plinary action, but this decision shall not be recorded in the complaint file.

(d) When the final decision provides for an award of attorney's fees and/or costs, the amount of those awards shall be determined under § 268.315(c). In the unusual situation in which the Board determines not to award attorney's fees and/or costs to a prevailing complainant, the decision shall set forth the specific reasons for denying the award.

(e) The decision letter shall inform the complainant that at his or her request the decision may be reviewed by the Equal Employment Opportunity Commission under Subpart H, of his or her right to file a civil action in accordance with § 268.316 of this subpart, and of the time limits applicable thereto.

§ 268.312 Complaint file.

(a) The EEO Officer shall maintain a complaint file containing all documents pertinent to the complaint, except as provided in § 268.311(c)(4). The complaint file shall include copies of:

(1) The notice of the EEO Counselor to the complainant, or his or her authorized representative, pursuant to § 268.301(a);

(2) The written report of the EEO Counselor under § 268.301(a) to the EEO Office on whatever precomplaint counseling efforts were made with regard to the complainant's case;

(3) The complaint;

(4) The investigative file;

(5) If the complaint is withdrawn by the complainant, a written statement of the complainant, or his or her authorized representative, to that effect;

(6) If adjustment of the complaint is arrived at under § 268.307, the written record of the terms of the adjustment;

(7) If no adjustment of the complaint is arrived at under § 268.307, a copy of the letter under § 268.307(d) notifying the complainant, or his or her authorized representative, of the proposed disposition of the complaint and of complainant's right to a hearing;

(8) If the decision is made under § 268.307(e), a copy of the letter to the complainant transmitting that decision;

(9) If a hearing was held, the record of the hearing, together with the complaints examiner's findings, analysis, and recommended decision on the merits of the complaint;

(10) The recommendations of the Staff Director For Management or the EEO Programs Officer, if any, to the Board of Governors, the Administrative Governor, or the Staff Director For Management; and

(11) If the decision is made under § 268.311, a copy of the letter transmitting the decision.

(b) The complaint file shall contain no document that has not been made available to the complainant, or his or her authorized representative, including a physician designated in writing by the complainant.

§ 268.313 Joint processing and consolidation of complaints.

(a) Two or more complaints of discrimination filed by employees or applicants for employment with the Board consisting of substantially similar allegations of discrimination may, with written permission of the complainants, be consolidated by the EEO Programs Officer.

(b) Two or more individual complaints of discrimination from the same employee or applicant for employment may, at the discretion of the EEO Programs Officer, be joined for processing after notifying the complainant that the complaints will be processed jointly.

§ 268.314 Freedom from reprisal or interference.

(a) *Freedom from reprisal.* Complainants, their authorized representatives, and witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage under § 268.301, or any time thereafter.

(b) *Review of allegations of reprisal.* A complainant, his or her authorized representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal for having filed a complaint or for having participated in the processing of a complaint under this subpart, may, if an employee or applicant for employment, have the allegation reviewed as an individual complaint of discrimination subject to the provisions of this subpart.

(c) *Consolidation of complaints.* When a complainant alleges that he or she has been subjected to restraint, interference, coercion, discrimination, or reprisal in connection with the filing of a prior complaint of discrimination and that prior complaint from which the allegation derives is in process at the Board at the time the allegation is made, the complainant may request the EEO Programs Officer to consolidate the allegation with the prior complaint. If the prior complaint is at the hearing stage of the complaint process under § 268.308, the complainant may request the complaints examiner to consolidate the allegation with the complaint at the hearing. The EEO Programs Officer or the complaints examiner may grant the request, *Provided,* that the request is made within 30 calendar days of occurrence of the act which forms the basis of the allegation, or within 30 calendar days of its effective date, if a personnel action. The EEO Programs Officer or the complaints examiner may also deny the request, at his or her discretion, and require that the allegation be processed in accordance with § 268.314(b).

§ 268.315 Remedial actions.

(a) *Remedial action involving an applicant.* (1) When it is determined that an applicant for employment has been discriminated against, the Board shall offer the applicant employment of the type and grade denied him or her, unless the record contains clear and convincing evidence that the applicant would not have been hired even absent discrimination. The offer shall be made in writing. The applicant shall have 15 calendar days from receipt of the offer within which to accept or decline the offer. Failure to notify the Board of his or her decision within the 15-day period will be considered a declination of the offer, unless the applicant can show that circumstances beyond his or her control prevented the applicant from responding within the time limit. If the offer is accepted, appointment shall be retroactive to the date the applicant should have been hired, subject to the limitation in paragraph (a)(3) of this section. Back pay, computed in the manner set forth in paragraph (d) of this section, shall be awarded from the beginning of the retroactive period, subject to the same limitation, until the date the individual actually enters on duty. The applicant shall be deemed to have performed services for the Board during this period of retroactivity for all purposes except for meeting service requirements for completion of a probationary or trial period that is required. If the offer is declined, the applicant shall be awarded a sum equal to the back pay he or she would have received, computed in the manner set forth in paragraph (d) of this section, from the date he or she would have been appointed until the date the offer was made subject to paragraph (a)(3) of this section. The applicant shall be informed in the offer of his or her right to this award in the event he declines the offer.

(2) When it is determined that discrimination existed at the time the applicant was considered for employment but that there is clear and convincing evidence that the applicant would not have been hired even absent the discrimination, the Board shall consider the applicant for any existing vacancy of the type and grade for which he or she was considered initially and for which he or she is qualified before consideration is given to other candidates. If the applicant is not selected, the Board shall record the reasons for nonselection. If no vacancy exists, the Board shall give the applicant priority consideration for the next vacancy for which he or she is qualified. This priority shall take precedence over all other Board employment priorities.

(3) A period of retroactivity or a period for which back pay is awarded under this paragraph may not extend from a date earlier than two years prior to the date on which the complaint was initially filed. If a finding of discrimination was not based on a complaint, the period of retroactivity or period for which back pay is awarded under this paragraph may not

extend earlier than two years prior to the date the finding of discrimination was recorded.

(b) *Remedial action involving an employee.* When it is determined that a Board employee has been discriminated against, the Board shall take remedial actions which may include, but need not be limited to, one or more of the following:

(1) Retroactive promotion, with back pay computed in the manner set forth in paragraph (d) of this section, unless the record contains clear and convincing evidence that the employee would not have been promoted or employed at a higher grade, even absent discrimination. The back pay liability may not accrue from a date earlier than two years prior to the date the discrimination complaint was filed, but, in any event shall not exceed the date the employee would have been promoted. If a finding of discrimination was not based on a complaint, the back pay liability may not accrue from a date earlier than two years prior to the date the finding of discrimination was recorded, but, in any event, shall not exceed the date he or she would have been promoted;

(2) Consideration for promotion to a position for which the employee is qualified before consideration is given to other candidates, if the record contains clear and convincing evidence that, although discrimination existed at the time selection for promotion was made, the employee would not have been promoted even absent discrimination. If the employee is not selected, the Board shall record the reasons for nonselection. This priority consideration shall take precedence over all other Board employment priorities;

(3) Cancellation of an unwarranted personnel action and restoration of the employee;

(4) Expunction from the Board's records of any reference to or any record of an unwarranted disciplinary action;

(5) Full opportunity to participate in the employee benefit denied him or her (e.g., training, preferential work assignments, overtime scheduling).

(c) *Attorney's fees or costs*— (1) *Awards of attorney's fees or costs.* The Board may award the complainant reasonable attorney's fees and/or costs incurred in the processing of complaints of discrimination or retaliation under this subpart. In a decision made under §§ 268.307, 268.310, 268.311, 268.314, or under Subpart D of this regulation, or in connection with any review by the Equal Employment Opportunity Commission pursuant to Subpart H, the Board may award reasonable attorney's fees or costs incurred in the processing of the matter.

(i) A finding of discrimination shall raise a presumption of entitlement to an award of attorney's fees.

(ii) Attorney's fees may be allowed only for the services of members of the Bar and law clerks, paralegals, or law students under supervision of members of the Bar, except that no award is allowable for the services of any employee of the Federal Government.

(iii) Attorney's fees shall be paid only for services performed after the filing of the complaint under § 268.302 and after the complainant has notified the Board that he or she is represented by an attorney, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. Written submissions to the Board which are signed by the attorney shall be deemed to constitute notice of representation.

(2) *Amount of award.* When it is determined to award attorney's fees and/or costs, the complainant's attorney shall submit a verified statement of costs and attorney's fees, as appropriate, to the Board within 20 calendar days of receipt of the decision. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services, and both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees and/or costs to be awarded the complainant shall be determined by agreement between the complainant, the complainant's representative, and a representative of the Board. Such agreement shall immediately be reduced to writing. If the

complainant, the complainant's representative, and the Board's representative cannot reach an agreement on the amount of attorney's fees and costs within 20 calendar days of receipt of the verified statement and accompanying affidavit, the amount of attorney's fees and/or costs to be awarded shall be decided under § 268.311 within 30 calendar days of receipt of the statement and affidavit. Such decision shall include the specific reasons for determining the amount of the award.

(i) The amount of the attorney's fees and costs awarded shall be determined in accordance with the following standards: The time and labor required; the novelty and difficulty of the questions presented by the complaint; the skill requisite to perform the legal services properly; the preclusion of other employment by the attorney due to acceptance of the case; the customary fee; whether the fee is fixed or contingent; time limitations imposed by the client or the circumstances; the amount involved and the results obtained; the experience, reputation, and ability of the attorney; the undesirability of the case; the nature and length of the professional relationship between the complainant and the attorney; and awards in similar cases.

(ii) The costs which may be awarded include:

(A) Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case unless provided by the Board;

(B) Fees and disbursements for printing and witnesses except to the extent already paid for by the Board;

(C) Fees for exemplification and copies of papers necessarily obtained for use in the case except to the extent already paid for by the Board; and

(D) Any other costs determined to be reasonable by the Board of Governors or the Administrative Governor under § 268.311, or the Staff Director For Management if he or she is authorized to make the decision under § 268.202(c). Witness fees shall be awarded in accordance with the provisions of 28 U.S.C. 1821. However, no award may be made for a Board or Federal government employee who is in a duty status when made available as a witness.

(d) *Computation of back pay.* (1) The Board will compute for the period covered by the corrective action the pay, allowances, and differentials the complainant would have received if discrimination had not occurred.

(2) No complainant shall be granted more pay, allowances, or differentials under this paragraph than he or she would have received if discrimination had not occurred.

(3) Except as provided in paragraph (d)(4) of this section, in computing back pay under this paragraph, the Board shall not include:

(i) Any period during which the complainant was not ready, willing, and able to perform his or her duties because of an incapacitating illness or injury; or

(ii) Any period during which the complainant was unavailable for the performance of his or her duties for reasons other than those related to, or caused by, the discriminatory actions against the complainant.

(4) In computing the amount of back pay under this paragraph, the Board shall grant, upon written request of a complainant, any sick or annual leave available to the complainant for a period of incapacitation if the complainant can establish that the period of the incapacitation was the result of illness or injury.

(5) In computing the amount of back pay under this paragraph, the Board shall deduct:

(i) Any amounts earned by a complainant from other employment during the period covered by the corrective action. The Board will include as other employment only employment engaged in by the complainant to take the place of employment from which the complainant had been separated from or did not receive because of discrimination against the complainant; and

(ii) Any erroneous payments received from the Board or other Federal government agencies as a result of the discriminatory actions against complainant, which, in the case of erroneous payments received from the Board's or other Federal government retirement systems, shall be returned to the appropriate system.

§ 268.316 Right to file a civil action.

(a) Except as provided in paragraph (c) of this section, a complainant is authorized to file a civil action against the Board in an appropriate United States District Court:

(1) Within 30 calendar days of receipt of notice of final action on the complaint under §§ 268.305(b), 268.307(b), 268.310 (b) and (c), and 268.311;

(2) After 180 calendar days from a date of filing a complaint with the Board if there has been no decision;

(3) Within 30 calendar days following receipt of notice of the final findings of the Equal Employment Opportunity Commission on a request to review the final action by the Board pursuant to Subpart H of this regulation; or

(4) After 180 calendar days from the date of filing of a request for review of a final decision of the Board by the Equal Employment Opportunity Commission if there has been no findings by the Equal Employment Opportunity Commission pursuant to Subpart H of this regulation.

(b) For the purposes of this part, the decision of the Board shall be final only when the Board makes a determination on all of the issues in the complaint, including whether or not to award attorney's fees and/or costs. If a determination to award attorney's fees and/or costs is made, the decision is not final until the procedures are followed for determining the amount of the award as set forth in § 268.315(c) of this subpart.

(c) A complainant who filed a complaint of discrimination because of age or because of denial of equal pay shall file civil actions within the time limits set forth in § 268.505 of Subpart E of this regulation for complaints of age discrimination and in § 268.904 of Subpart I of this regulation for complaints of denial of equal pay.

§ 268.317 Notice of right.

The Board shall notify a complainant in writing of his or her right to file civil action, and of the 30-day time limit to file civil suit specified in § 268.316, or of the 6 year time limit to file civil action specified in § 268.505 in the case of discrimination because of age and in § 268.904 in the case of denial of equal pay, in any final action on a complaint under this subpart.

§ 268.318 Effect on administrative procedure.

The filing of a civil action does not terminate Board processing of a complaint or Equal Employment Opportunity Commission review of any Board action under this subpart.

Subpart D—Class Complaints of Discrimination

§ 268.401 Definitions.

(a) A "class" is a group of Board employees or applicants for employment, on whose behalf it is alleged that they have been, are being, or may be adversely affected, by a Board personnel management policy of practice which the Board has authority to rescind or modify, and which discriminates against the group on the basis of their common race, color, religion, sex, national origin, age, or mental or physical handicap.

(b) A "class complaint" is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

(1) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(2) There are questions of fact common to the class;

(3) The claims of the agent of the class are typical of the claims of the class; and

(4) The agent of the class, or his or her authorized representative, if any, will fairly and adequately protect the interests of the class.

(c) An "agent of the class" is a class member who acts for the class during the processing of the class complaint.

§ 268.402 Precomplaint processing.

(a) An employee or applicant for employment who wishes to be an agent and who believes he or she has been discriminated against shall consult with an EEO Counselor within 90 calendar days of the matter giving rise to the allegation of individual discrimination or within 90 calendar days of its effective date if a personnel action.

(b) The EEO Counselor shall:

(1) Advise the aggrieved person of the discrimination complaint procedures, of his or her right to representation, including legal counsel, throughout the precomplaint and complaint process, and of the right to anonymity only during the precomplaint process;

(2) Make whatever inquiry he or she believes is necessary;

(3) Make an attempt at informal resolution through discussion with appropriate officials;

(4) Counsel the aggrieved person concerning the issues involved;

(5) Inform the EEO Officer and other appropriate officials when he or she believes corrective action is necessary;

(6) Keep a record of all counseling activities; and

(7) Summarize actions and advice in writing both to the EEO Officer and the aggrieved person concerning the issues arising from the personnel management policy or practice in question.

(c) The EEO Counselor shall conduct a final interview and terminate counseling with the aggrieved person not later than 30 calendar days after the date on which the allegation of discrimination was called to the attention of the EEO Counselor. During the final interview, the EEO Counselor shall inform the aggrieved person in writing that counseling is terminated, that he or she has the right to file a class complaint of discrimination with appropriate officials of the Board, of the time limits for filing a class complaint, of his or her right to representation, including legal counsel, and of his or her duty to assure that the Board is immediately informed if legal representation is obtained.

(d) The EEO Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint or to encourage the person to file a complaint.

(e) The EEO Counselor shall not reveal the identity of an aggrieved person during the period of consultation, except when authorized to do so in writing by the aggrieved person.

(f) All Board employees and officers shall fully cooperate with EEO Counselors in the performance of their duties under this section. EEO Counselors shall have routine access to personnel records of the Board without unwarranted invasion of privacy.

(g) Corrective action taken as a result of counseling shall be consistent with law and the Board's regulations, rules, and instructions.

§ 268.403 Filing and presentation of a class complaint.

(a) The complaint must be submitted in writing by the agent, or his or her authorized representative, and be signed by the agent.

(b) The complaint shall set forth specifically and in detail:

(1) A description of the Board personnel management policy or practice giving rise to the complaint; and

(2) A description of the resultant personnel action or matter adversely affecting the agent.

(c) The complaint must be filed not later than 15 calendar days after the agent's receipt of the notice of final interview with an EEO Counselor pursuant to § 268.402(c).

(d) The complaint must be filed with either the Administrative Governor, the Staff Director For Management, the EEO Programs Officer, the EEO Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coordinator.

(e) A complaint shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by an official with whom complaints may be filed.

(f) At all stages, including counseling, in the preparation and presentation of a complaint or claim, and review by the Equal Employment Opportunity Commission of a Board decision on a complaint or claim under subpart H, the agent or claimant shall have the right to be accompanied, represented, and advised by a representative of his or her own choosing, including legal counsel, provided the choice of a representative does not involve a conflict of interest or conflict of position. The representative shall be designated in writing and the designation made a part of the class complaint file.

(g) If the agent is a Board employee in an active duty status, he or she shall have a reasonable amount of official time to prepare and present the complaint. Board employees, including attorneys, who are representing employees of the Board in discrimination complaint cases must be permitted to use a reasonable amount of official time to carry out that responsibility whenever it is consistent with the faithful performance of their duties.

§ 268.404 Acceptance, rejection or cancellation.

(a) Within 10 calendar days of the Board's receipt of a complaint, the EEO Officer shall forward the complaint, along with a copy of the EEO Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, the the Equal Employment Opportunity Commission with a request for designation of a complaints examiner qualified to conduct the proceeding.

(b) The complaints examiner may recommend that the Board reject the complaint, or a portion thereof, for any of the following reasons:

(1) The complaint was not timely filed;

(2) The complaint consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending before the Board or which has been resolved or decided by the Board;

(3) The complaint is not within the purview of this subpart;

(4) The agent failed to consult an EEO Counselor in a timely manner;

(5) The complaint lacks specificity and detail;

(6) The complaint was not submitted in writing, or was not signed by the agent; or

(7) The complaint does not meet all of the prerequisites set forth in § 268.401(b) of this subpart.

(c) If an allegation is not included in the EEO Counselor's report, the complaints examiner shall afford the agent 15 calendar days to explain whether the matter was discussed with an EEO Counselor and if not, why he or she did not discuss the allegation with an EEO Counselor. If the explanation is not satisfactory, the complaints examiner may recommend that the Board reject the allegation. If the explanation is satisfactory, the complaints examiner may refer the allegation to the Board for further counseling of the agent.

(d) If an allegation lacks specificity an detail, the complaints examiner shall afford the agent 15 calendar days to provide specific and detailed information. The complaints examiner may recommend that the Board reject the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the complaints examiner must advise the agent how to proceed on an individual or class basis concerning these allegations.

(e) The complaints examiner may recommend that the Board extend the time limits for filing a complaint and for consulting with an EEO Counselor when the agent, or his or her authorized representative, shows that he or she was not notified of the prescribed time limits and was not otherwise aware of them or that he or she was prevented by circumstances beyond his or her control from acting within the time limits.

(f) When appropriate, the complaints examiner may recommend to the Board that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(g) The complaints examiner may recommend that the Board cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after the complaints examiner has provided the agent, or his or her authorized representative, a written request, including notice of proposed cancellation, that the agent provide certain information or otherwise proceed with the complaint, and the agent has failed to satisfy this request within 15 calendar days of his or her receipt of the request.

(h) An agent, or his or her authorized representative, must be informed by the complaints examiner in a request under paragraph (c) or (d) of this section that his or her complaint may be rejected if the information is not provided.

(i) The complaints examiner's recommendation to the Board on whether to accept, reject, or cancel a complaint shall be transmitted in writing to the Board and the agent, or his or her authorized representative. The complaints examiner's recommendation to accept, reject, or cancel shall become the Board's decision unless the EEO Programs Officer rejects or modifies the decision within 10 calendar days of its receipt. The EEO Programs Officer shall notify the agent, or his or her authorized representative, and the complaints examiner of this or her decision to accept, reject, or cancel a complaint. The notice of a decision to reject or cancel the class complaint shall inform the agent of his or her right to proceed with an individual complaint of discrimination under Subpart C, that he or she may request that the Board's decision on the complaint be reviewed by the Equal Employment Opportunity Commission pursuant to subpart H, and of his or her right to file a civil action pursuant to § 268.415, and of the time limits applicable thereto.

§ 268.405 Notification and opting out.

(a) After acceptance of a class complaint, the Board, within 15 calendar days, shall use reasonable means, such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

(b) A notice shall contain: (1) The name of the Board or organizational segment(s) thereof involved, its location, and the date of acceptance of the complaint;

(2) A description of the issues accepted as part of the class complaint;

(3) An explanation that class members may remove themselves from the class by notifying the EEO Programs Officer within 30 calendar days after issuance of the notice; and

(4) An explanation of the binding nature of the final decision on or resolution of the complaint.

§ 268.406 Avoidance of delay.

The complaint shall be processed promptly after it has been accepted. To this end, the parties shall proceed with the complaint without undue delay so that the complaint is processed within 180 calendar days after it was filed.

§ 268.407 Freedom from restraint, interference, correction, and reprisal.

(a) Agents, claimants, their authorized representatives, witnesses, the Staff Director For Management, the EEO Programs Officer, the EEO Officer, EEO Investigators, EEO Counselors, and other Board officials having responsibility for the processing of discrimination complaints shall be free from restraint, interference, coercion, and reprisal at all stages in the presentation and processing of a complaint, including the counseling stage under § 268.402 or any time thereafter.

(b) A person identified in paragraph (a) of this section, if a Board employee or applicant for employment, may file a complaint of restraint, interference, coercion, or reprisal in connection with the presentation and processing of a complaint of discrimination. The complaint shall be filed and processed in accordance with the provisions of Subpart C of this regulation.

§ 268.408 Obtaining evidence concerning the complaint.

(a) *General.* (1) Upon the acceptance of a complaint, the EEO Programs Officer shall designate a Board representative. The Board representative shall not be an alleged discriminating official or any individual designated under Subpart B of this regulation.

(2) In representing the Board, the Board representative shall consult with officials, if any, named or identified as responsible for the alleged discrimination, and other officials or employees of the Board as necessary. In such consultations, the Board representative shall be subject to the provisions of the Board's regulations, rules, and instructions concerning privacy and access to individual personnel records and reports.

(b) *Development of evidence.* (1) The complaints examiner shall notify the agent, or his or her authorized representative, and the Board representative that a period of not more than 60 calendar days will be allowed for both parties to prepare their cases. This time period may be extended by the complaints examiner upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint. Evidence may be developed through interrogatories, depositions, and requests for production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(2) In the event that mutual cooperation fails, either party may request the complaints examiner to rule on a request to develop evidence. When the complaints examiner renders his or her report of findings and recommendations on the merits of the complaint, a party's failure to comply with the complaints examiner's ruling on an evidentiary request may be taken into account.

(3) During the time period for development of evidence, the complaints examiner may, at his or her discretion, direct that an investigation of facts relevant to the complaint, or any portion thereof, be conducted by an investigator trained and/or certified by the Equal Employment Opportunity Commission.

(4) Both parties shall furnish the complaints examiner all materials that they wish the complaints examiner to examine and such other material as the complaints examiner may request.

§ 268.409 Opportunities for resolution of the complaint.

(a) The complaints examiner shall furnish the agent, or his or her authorized representative, and the Board representative with a copy of all materials obtained concerning the complaint and provide an opportunity for the agent, or his or her authorized representative, to discuss these materials with the Board representative and attempt resolution of the complaint.

(b) At any time after acceptance of a complaint, the complaint may be resolved by agreement of the Board and the agent to terms offered by either party.

(c) If resolution of the complaint is arrived at, the terms of the resolution shall be reduced to writing, and signed by the agent and the Staff Director For Management. A resolution may include a finding on ther issue of discrimination, and award of attorney's fees and/or costs, and must include any corrective action agreed upon. Corrective action in the resolution must be consistent with law and the Board's regulations, rules, and instructions. A copy of the resolution shall be provided to the agent.

(d) Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and shall state the terms of corrective action, if any, to be granted by the Board. A resolution shall bind all members of the class.

(e) If the Board does not carry out, or rescinds, any action specified by the terms of the resolution for any reason not attributable to acts or conduct of the agent, his or her authorized representative, or class members, the Board upon the agent's written request shall reinstate the complaint for further processing from the point processing ceased under the terms of the resolution. Failure of the Board to reinstate the complaint may be reviewed by the Equal Employment Opportunity Commission pursuant to Subpart H of this regulation.

§ 268.410 Hearing.

On the expiration of the period allowed for preparation of the case, the complaints examiner shall set a date for a hearing. The hearing shall be conducted in accordance with § 268.308 of Subpart C of this regulation.

§ 268.411 Report of findings and recommendations.

(a) The complaints examiner shall transmit to the EEO Programs Officer:

(1) The record of the hearing;

(2) The complaints examiner's findings and analysis with regard to the complaint; and

(3) The complaints examiner's report of findings and recommended decision on the complaint, including corrective action pertaining to systemic relief for the class and any individual corrective action, where appropriate, with regard to the personnel action or matter which gave rise to the complaint.

(b) The complaints examiner shall notify the agent, or his or her authorized representative, of the date on which the report of findings and recommendations was forwarded to the EEO Programs Officer.

§ 268.412 Board decision.

(a)(1) The EEO Programs Officer shall notify the Board of Governors when the complaint is ripe for decision under this section. At the request of any member of the Board of Governors made within 7 calendar days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director For Management if he or she is delegated the authority to do so under § 268.202(c), shall make the decision on the complaint.

(2) Within 30 calendar days of receipt of the report of findings and recommendations issued under § 268.411 of this subpart, the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is authorized to make the decision under § 268.202(c), shall issue a decision to accept, reject, or modify the findings and recommendations of the complaints examiner.

(3) The decision of the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is delegated the authority to make the decision under § 268.202(c), shall be in writing and shall be transmitted to the agent, or his or her authorized representative, along with a copy of the record of the hearing and a copy of the findings and recommendations of the complaints examiner.

(4) When the decision of the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is delegated the authority to make the decision under § 268.202(c), is to reject or modify the findings and recommendations of the complaints examiner, the decision shall contain the specific reasons in detail for the action.

(b) If the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is authorized to make the decision under § 268.202(c), has not issued a decision within 30 calendar days of receipt by the Board of the complaints examiner's report of findings and recommendations, those findings and recommendations shall become the final Board decision. The Board shall transmit the final Board decision and the record of the hearing to the agent, or his or her authorized representative, within 5 calendar days of the expiration of the 30-day period.

(c) The decision of the Board of Governors, the Administrative Governor, or the Staff Director For Management if he or she is authorized to make the decision under § 268.202(c) of Subpart C of this regulation, shall require any remedial action authorized by law and determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the Board shall:

(1) Advise the agent, or his or her authorized representative, that any request for attorney's fees and/or costs must be documented and submitted within 20 calendar days of receipt of the decision;

(2) Review the matter giving rise to the complaint to determine whether disciplinary action against alleged discriminatory officials is appropriate; and

(3) Record the basis for its decision to take or not to take disciplinary action, but this decision shall not be recorded in the complaint file.

(d) When the final decision provides for the award of attorney's fees and/or costs, the amount of these awards shall be determined under § 268.315(c) of Subpart C of this Regulation. When it is determined not to award attorney's fees and/or costs, the decision shall set forth the specific reasons for denying the award.

(e) The decision shall inform the agent, or his or her authorized representative, that on request of the agent the decision under this section may be reviewed by the Equal Employment Opportunity Commission pursuant to Subpart H of this Regulation, of his or her right to file a civil action in accordance with § 268.415 of this subpart, and of the time limits applicable thereto.

(f) A final decision on a class complaint shall be binding on all members of the class and Board.

§ 268.413 Notification to class members of decision.

Class members shall be notified by the Board, through the same media employed to give notice of the existence of the class complaint, of the Board decision and corrective action, if any. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the Board within 10 calendar days of the transmittal of its decision to the agent.

§ 268.414 Corrective action.

(a) When discrimination is found, the Board shall eliminate or modify the personnel policy or practice out of which the complaint arose, and provide individual corrective action, including an award of attorney's fees and/or costs to the agent, in accordance with § 268.315 of Subpart C of this Regulation. Corrective action in all cases must be consistent with law and Board regulations, rules, and instructions.

(b) When discrimination is found and a class member believes that but for that discrimination, he or she would have received employment or an employment benefit, the class member may file a written claim with the EEO Programs Officer within 30 calendar days of notification by the Board of its decision.

(c) The claim must include a specific, detailed showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory policy or practice within not more than 135 calendar days preceding the filing of the class complaint.

(d) The EEO Programs Officer shall attempt to resolve the claim for relief within 60 calendar days after the date the claim was postmarked, or in the absence of a postmark, within 60 calendar days after the date it was received by the EEO Programs Officer, with whom claims may be filed. If the EEO Programs Officer and claimant do not agree that the claimant is a member of the class or upon the relief to which the claimant is entitled, the EEO Programs Officer shall refer the claim, with recommendations concerning it, to the complaints examiner.

(e) The complaints examiner shall notify the claimant of his or her right to a hearing on the claim and shall allow the parties to the claim an opportunity to submit evidence and representations concerning the claim. If a hearing is requested, it shall be conducted in accordance with § 268.308 of Subpart C of this Regulation. If no hearing is requested, the complaints examiner, in his or her discretion, may hold a hearing to obtain necessary evidence concerning the claim.

(f) The complaints examiner shall issue a report of findings and recommendations on the claim which shall be treated the same as a report of findings and recommendations under §§ 268.411 and 268.412.

(g) If the complaints examiner determines that the claimant is not a member of the class or that the claim was not timely filed, the complaints examiner shall recommend rejection of the claim and give notice of his or her action to the Board, the claimant and the claimant's authorized representative. Such notice shall include advice that the claimant may request review of the claim by the Equal Employment Opportunity Commission pursuant to subpart H and of claimant's right to file a civil action in accordance with the provisions of § 268.415.

§ 268.415 Right to file a civil action for judicial review.

(a) Except as provided in paragraph (c) of this section, an agent who has filed a compliant or a claimant who has filed a claim for relief based on race, color, religion, sex, national origin, or physical or mental handicap, is authorized to file a civil action against the Board in an appropriate United States district court:

(1) Within 30 calendar days of his or her receipt of notice of final action taken by the Board;

(2) After 180 calendar days from the date he or she filed a complaint or claim with the Board if there has been no final decision on the complaint or claim.

(3) Within 30 calendar days following receipt of notice of the final findings of the Equal Employment Opportunity Commission on a request to review the final decision of the Board pursuant to Subpart H of this regulation; or

(4) After 180 calendars days from the date of filing of a request for review of a final decision of the Board by the Equal Employment Opportunity Commission if there has been no finding by the Equal Employment Opportunity Commission pursuant to Subpart H of this regulation.

(b) For the purposes of this Part, the decision of the Board shall be final only when the Board makes a determination on all issues in the complaint, including whether or not to award attorney's fees and/or costs. If a determination to award attorney's fees and/or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in § 268.315(c) of Subpart C.

(c) An agent who filed a class complaint of discrimination because of age shall file a civil suit within the time limits set forth in § 268.505 of Subpart E of this regulation. An agent who filed a class complaint of denial of equal pay shall file a civil suit within the time limits set forth in § 268.904 of Subpart I of this regulation.

§ 268.416 Notice of right.

When the agent alleges that the Board discriminated against a class on the basis of race, color, religion, sex, national origin, age, or physical or mental handicap, or a claimant files for relief, the Board shall notify the agent or claimant in writing of his or her right to file a civil action following any final action on a complaint or claim under this subpart.

§ 268.417 Effect on administrative processing.

The filing of a civil action by an agent or claimant does not terminate Board processing of a complaint or claim or Equal Employment Opportunity Commission review of any Board action under this subpart.

Subpart E—Nondiscrimination on Account of Age

§ 268.501 Policy statement.

(a) The Board shall not:

(1) Fail or refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges or employment, because of such individual's age, except as permitted by § 268.504;

(2) Limit, segregate, or classify Board employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee or applicant because of such individual's age, except as permitted by § 268.504; or

(3) Reduce the wage rate of any employee in order to comply with this policy.

(b) The Board shall not discriminate against any employee or applicant for employment because such employee or applicant has opposed any practice forbidden under this subpart or because such employee or applicant has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or litigation under this subpart.

(c) The Board shall not print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the Board indicating any preference, limitation, specification, or discrimination, based on age, except as permitted by § 268.504.

§ 268.502 Processing of complaints.

All individual and class complaints of discrimination on the basis of age shall be filed and processed pursuant to Subparts C and D, respectively, except that civil actions shall be filed pursuant to § 268.505 of this subpart and except that § 268.315(c) providing for award of attorney's fees and/or costs shall not apply to complaints of discrimination under this subpart. A complaint may also be filed by an organization for a complainant with his or her consent.

§ 268.503 Coverage.

A person filing a complaint of discrimination on the basis of age must have been at least 40 years of age at the time the alleged discrimination occurred.

§ 268.504 Exceptions.

The Board may adopt such reasonable exemptions to the provisions of this subpart as have been established by the Equal Employment Opportunity Commission pursuant to 29 CFR 1613.501(c).

§ 268.505 Right to file civil action for judicial review.

A complainant, agent, or claimant, under this subpart is authorized to file a civil action against the Board in an appropriate United States District Court within six years of the matter causing the complainant, agent, or claimant to believe he or she has been discriminated against because of age.

§ 268.506 Effect on administrative procedure.

The filing of a civil action by an employee does not terminate Board processing of a complaint under this subpart or Equal Employment Opportunity Commission review of any such complaint pursuant to Subpart H.

Subpart F—Prohibition Against Discrimination in Employment Because of a Physical or Mental Handicap

§ 268.601 Definitions.

(a) "Handicapped person" is defined for the purposes of this subpart as one who has:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(b) "Physical or mental impairment" means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(c) "Major life activities" means functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(d) "Has a record of such an impairment" means has a history of, or has been classified (or misclassified) as having a mental or physical impairment that substantially limits one or more major life activities.

(e) "Is regarded as having such an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment; or

(3) Has none of the impairments defined in paragraph (b) of this section but is treated by an employer as having such an impairment.

(f) "Qualified handicapped person" is defined for the purposes of this subpart to mean, with respect to employment, a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the handicapped person or others, and who, depending upon the type of appointing authority being used:

(1) Meets the experience and/or education requirements (which may include passing a written test) of the position in question; or

(2) Meets the criteria for appointment under one of the special appointing authorities for handicapped persons.

(g) "Facility" is defined for the purposes of this subpart to mean all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

§ 268.602 General policy.

The Board gives full consideration to hiring, placement, and advancement of qualified physically or mentally handicapped persons. The Board shall be a model employer of handicapped individuals. The Board shall not discriminate against qualified physically or mentally handicapped persons.

§ 268.603 Reasonable accommodation.

(a) The Board shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped employee or applicant for employment unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its programs.

(b) Reasonable accommodation may include, but shall not be limited to:

(1) Making facilities readily accessible to and usable by handicapped persons;

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters, and other similar actions; and

(3) Reassignment to another job position, if practicable.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operations of the Board, factors to be considered include:

(1) The overall size of the Board's program with respect to the number of employees, number and type of facilities, and size of budget;

(2) The type of Board operation including the composition and structure of the Board's work force; and

(3) The nature and the cost of the accommodation.

§ 268.604 Employment criteria.

(a) The Board shall not make use of any employment test or other selection criterion that screens out or tends to screen out qualified handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the Board, is job-related for the position in question; and

(2) There are not available alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons.

(b) The Board shall select and administer tests concerning employment so as to insure that, when administered to an employee or applicant for employment who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the employee's or applicant's ability to perform the position or type of position in question, rather than reflecting the employee's or applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 268.605 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, the Board shall not conduct any preemployment medical examination and shall not make preemployment inquiry of an applicant for employment as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. The Board may, however, make preemployment inquiry into an applicant's ability to meet the medical qualification requirements, with or without reasonable accommodation, of the position in question (i.e., the minimum abilities necessary for safe and efficient performance of the duties of the position in question).

(b) Nothing in this section shall prohibit the Board from conditioning an offer of employment on the results of a medical examination conducted coincident to the employee's entrance on duty, provided, that:

(1) All entering employees are subjected to such an examination regardless of handicap or when the preemployment medical questionnaire used for positions which do not routinely require medical examination indicates a condition for which further examination is required because of the job-related nature of the condition; and

(2) The results of such an examination are used only in accordance with the requirements of this subpart.

(c) To enable and evaluate affirmative action to hire, place, or advance handicapped individuals, the Board may invite employees and applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) Any written questionnaire used for this purpose, and any employee requesting such information, shall state clearly that the information requested is intended for use solely in conjunction with affirmative action; and

(2) Any such written questionnaire or employee requesting such information shall state clearly that the information is being requested on a voluntary basis, that refusal to provide it will not subject the employee or applicant for employment to any adverse treatment, and that it will be used only in accordance with this subpart.

(d) Information obtained in accordance with this section as to the medical condition or history of the employee or applicant for employment shall be kept confidential except that:

(1) Managers, selecting officials, and others involved in the selection process or responsible for affirmative action may be informed that the employee or applicant for employment is a handicapped individual eligible for affirmative action;

(2) Supervisors and managers may be informed regarding necessary accommodations;

(3) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment;

(4) Government officials investigating compliance with laws, regulations, and instructions relevant to equal opportunity and affirmative action for handicapped individuals shall be provided information upon request; and

(5) Statistics generated from information obtained may be used to manage, evaluate, and report on equal opportunity and affirmative action programs.

§ 268.606 Physical access to buildings.

The Board shall not discriminate against qualified handicapped employees or applicants for employment due to the inaccessibility of its facilities.

§ 268.607 Processing complaints.

All individual complaints of discrimination on the basis of handicap shall be processed under Subpart C. All class complaints of discrimination on the basis of handicap shall be processed under Subpart D.

Subpart G—Prohibition Against Discrimination in Board Programs and Activities Because of a Physical or Mental Handicap

§ 268.701 Purpose and application.

(a) *Purpose.* The purpose of this subpart is to prohibit discrimination on the basis of handicap in programs or activities conducted by the Board.

(b) *Application.* This subpart applies to all programs and activities conducted by the Board. Such programs and activities include:

(1) Holding open meetings of the Board or other meetings or public hearings at the Board's office in Washington, D.C.;

(2) Responding to inquiries, filing complaints, or applying for employment at the Board's office;

(3) Making available the Board's library facilities; and

(4) Any other lawful interaction with the Board or its staff in any official matter with people who are not employees of the Board.

This subpart does not apply to Federal Reserve banks or to financial institutions or other companies supervised or regulated by the Board.

§ 268.702 Definitions.

(a) "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Board. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunication devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

(b) "Complete complaint" means a written statement that contains the complainant's name and address and describes the Board's alleged discriminatory actions in sufficient detail to inform the Board of the nature and date of the alleged violation. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(c) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(d) "Handicapped person" means any person who has:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(e) "Physical or mental impairment" means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(f) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(g) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(h) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Board as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (h)(1) of this section but is treated by the Board as having such an impairment.

(i) "Qualified handicapped person" means:

(1) With respect to a Board program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Board can determine on the basis of a written record would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person

who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

§ 268.703 Self evaluation.

(a) The Board shall, within one year of the effective date of this section, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this subpart, and, to the extent modifications of any such policies and practices are required, the Board shall proceed to make the necessary modifications.

(b) The Board shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Board shall, for three years from the effective date of this section, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 268.704 Notice.

The Board shall make available to employees, applicants for employment, participants, beneficiaries, and other interested persons such information regarding the provisions of this subpart and its applicability to the programs and activities conducted by the Board, and make such information available to them in such manner as the Board finds necessary to appraise such persons of the protections against discrimination assured them by this subpart.

§ 268.705 Prohibition against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity conducted by the Board.

(b)(1) The Board, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Board may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Board may not, directly or through contractual or other arrangements, utilize criteria or methods of administration, the purpose or effect of which would:

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The Board may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Board; or

(ii) Defeat or substantially impair the accomplishment of the objectives or a program or activity with respect to handicapped persons.

(5) The Board, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The Board may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the Board establish requirements for the programs and activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs and activities of entities that are licensed or certified by the Board are not, themselves, covered by this subpart.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Board Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Board Order to a different class of handicapped persons is not prohibited by this subpart.

(d) The Board shall administer programs activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 268.706 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Board. The definitions, requirements and procedures of Subpart F of this regulation shall apply to discrimination in employment under this subpart.

§ 268.707 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 268.708, no qualified handicapped person shall, because the Board's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Board.

§ 268.708 Program accessibility: Existing facilities.

(a) *General.* The Board shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not:

(1) Necessarily require the Board to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the Board to take any action that it can determine, based on a written record, would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board shall establish a written record showing that compliance with paragraph (a) of this section would result in such alterations or burdens. The decision that compliance would result in such alterations or burdens shall be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The Board may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to handicapped persons, home visits, delivery of service at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The Board is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, the Board gives priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The Board shall comply with any obligations established under this section with which it is not presently complying within sixty days of the effective date of this section except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this section, but in any event, as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Board shall develop, within six months of the effective date of this section, a transition plan setting forth the steps necessary to complete such changes. The Board shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the Board's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the modifications that will make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 268.709 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Board, shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons.

§ 268.710 Communications.

(a) The Board shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Board shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Board.

(i) In determining what type of auxiliary aid is necessary, the Board shall give primary consideration to the requests of the handicapped person.

(ii) The Board need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Board communicates with employees and others by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The Board shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Board shall provide signs at a primary entrance to any inaccessible facility, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Board to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board shall establish a written record showing compliance with this section would result in such alterations or burdens. The determination that compliance would result in such alterations or burdens shall be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 268.711 Compliance procedures.

(a) *Applicability.* Notwithstanding any other provision of this Regulation, this section, except as provided in paragraph (b) of this section, rather than Subparts C and D of this Regulation shall apply to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Board.

(b) *Employment Complaints.* The Board shall process complaints alleging discrimination in employment on the basis of handicap in accordance with § 268.607.

(c) *Responsible Official.* The EEO Programs Officer shall be responsible for coordinating implementation of this section.

(d) *Filing the complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this subpart may, personally or by his or her authorized representative, file a complaint of discrimination with the EEO Programs Officer.

(2) *Confidentiality.* The EEO Programs Officer shall not reveal the identity of any person submitting a complaint, except when authorized to do so in writing by the complainant, and except to the extent necessary to carry out the purposes of this subpart, including the conduct of any investigation, hearing, or proceeding under this subpart.

(3) *When To file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The EEO Programs Officer may extend this time limit for good cause shown. For the purpose of determining when a complaint is timely filed under this paragraph, a complaint mailed to the Board shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Board.

(4) *How to file.* Complaints may be delivered or mailed to the Administrative Governor, the Staff Director For Management, the EEO Programs Officer, or the EEO Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coordinator. Complaints should be sent to the EEO Programs Officer, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, D.C. 20551. If any Board official other than the EEO Programs Officer receives a complaint, he or she shall forward the complaint to the EEO Programs Officer.

(e) *Acceptance of complaint.* (1) The EEO Programs Officer shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the Board has jurisdiction. The EEO Programs Officer shall notify the complainant of receipt and acceptance of the complaint.

(2) If the EEO Programs Officer receives a complaint that is not complete, he or she shall notify the complainant, within 30 calendar days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the EEO Programs Officer shall dismiss the complaint without prejudice.

(3) If the EEO Programs Officer receives a complaint over which the Board does not have jurisdiction, the

EEO Programs Officer shall notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) *Investigation/conciliation.* (1) Within 180 calendar days of the receipt of a complete complant, the EEO Programs Officer shall complete the investigation of the complaint, attempt informal resolution of the complaint, and if no informal resolution is achieved, the EEO Programs Officer shall forward the investigative report to the Staff Director For Management.

(2) The EEO Programs Officer may request Board employees to cooperate in the investigation and attempted resolution of complaints. Employees who are requested by the EEO Programs Officer to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The EEO Programs Officer shall furnish the complainant with a copy of the investigative report promptly after receiving it from the investigator and provide the complainant with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made a part of the complaint file, with a copy of the agreement provided to the complainant. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant has agreed.

(g) *Letter of findings.* If an informal resolution of the complaint is not reached, the EEO Programs Officer shall transmit the complaint file to the Staff Director For Management. The Staff Director For Management shall, within 180 days of the receipt of the complete complaint by the EEO Programs Officer, notify the complainant of the results of the investigation in a letter sent by certified mail, return receipt requested, containing:

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of right of the complainant to appeal the Letter of Findings to the Board of Governors or the Administrative Governor for a decision under paragraph (k) of this section; and

(4) A notice of right of the complainant to request a hearing.

(h) *Filing an appeal.* (1) Notice of appeal, with or without a request for hearing, shall be filed by the complainant with the EEO Programs Officer within 30 days of receipt from the Staff Director For Management of the Letter of Findings required by paragraph (g) of this section.

(2) If the complainant does not request a hearing, the EEO Programs Officer shall transmit the notice of appeal and investigative record to the Board of Governors or the Administrative Governor, whichever is the decision maker under paragraph (k) of this section.

(3) If the complainant does not file a notice of appeal within the time prescribed in paragraph (h)(1) of this section, the EEO Programs Officer shall certify that the Letter of Findings is the final Board decision on the complaint at the expiration of that time.

(i) *Acceptance of appeal.* The EEO Programs Officer shall accept and process any timely appeal. A complainant may appeal to the Administrative Governor from a decision by the EEO Programs Officer that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the EEO Programs Officer.

(j) *Hearing.* (1) Upon a timely request for a hearing, the EEO Programs Officer shall request that the Board of Governors appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 calendar days after the notice is issued and no later than 60 calendar days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedures Act). The adminis-

trative law judge shall have the duty to conduct a fair hearing, to take all necessary actions to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to:

(i) Arrange and change the dates, times, and places of hearings and pehearing conferences and to issue notice thereof;

(ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(iii) Require parties to state their positions in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(iv) Examine witnesses and direct witnesses to testify;

(v) Receive, rule on, exclude, or limit evidence;

(vi) Rule on procedural items pending before him or her, and

(vii) Take any action permitted to the administrative law judge as authorized by this subpart or by the provisions of the Administrative Procedure Act (5 U.S.C. 554-557).

(3) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph, but rules or principles designed to assure production of credible evidence and to subject testmony to cross-examination shall be applied by the administrative law judge wherever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(4) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Employees on the Board shall, upon the request of the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing, at the request of the administrative law judge and with the approval of the employing agency, shall be on official duty status during any absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the Board to pay travel expenses necessary for the complainant to attend the hearing.

(v) The Board shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the parties incurring them.

(5) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the EEO Programs Officer within 30 calendar days, after the receipt of the hearing transcripts, or within 30 calendar days after the conclusion of the hearing if no transcripts are made. This time limit may be extended with the permission of the EEO Programs Officer.

(6) Within 15 calendar days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to the recommended decision with the EEO Programs Officer. Thereafter, each party will have ten calendar days to file reply exceptions with the EEO Programs Officer.

(k) *Decision.* (1) The EEO Programs Officer shall notify the Board of Governors when the complaint is ripe for decision under this paragraph. At the request of any member of the Board of Governors made within 7 calendar days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor shall make the decision on the complaint. The decision shall be made based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 calendar days of the receipt by the EEO Programs Officer of the notice of appeal and investigative record pursuant to paragraph (h)(2) of this section or 60 calendar days following the end of the period for filing reply exceptions set forth in paragraph (j)(7) of this section, whichever is applicable. If the decision maker under this paragraph determines that additional information is needed from any party, the decision maker shall request the information and provide the other party or parties an opportunity to respond to that information. The decision maker shall have 60 calendar days from receipt of the additional information to render the decision on the appeal. The decision maker shall transmit the decision by letter to all parties. The decision shall set forth the findings, any remedial actions required, and the reasons for the decision. If the decision is based on a hearing record, the decision maker shall consider the recommended decision of the administrative law judge and render a final decision based on the entire record. The decision maker may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) The Board shall take any action required under the terms of the decision promptly. The decision maker Governor may require periodic compliance reports specifying:

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final Board decision has not been taken; and

(iii) The steps being taken to ensure full compliance.

(3) The decision maker may retain responsibility for resolving disputes that arise between parties over interpretation of the final Board decision, or for specific adjudicatory decisions arising out of implementation.

Subpart H—Review by the Equal Employment Opportunity Commission

§ 268.801 Entitlement.

(a) A complainant, agent, or claimant may request the Equal Employment Opportunity Commission to review any final decision of the Board under §§ 268.305(b), 268.307(b), 268.310, 268.311, 268.404, 268.409(e), 268.412, and 268.414.

(b) A complainant, agent, or claimant may not request review by the Equal Opportunity Commission under paragraph (a) of this section when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other request for review by the Equal Employment Opportunity Commission filed by the same complainant, agent, or claimant.

§ 268.802 Filing of the request for review.

The complainant, agent, or claimant shall file his or her request for review in writing, either personally or by mail, simultaneously with the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506, and with the Board's EEO Programs Officer.

§ 268.803 Time limits.

(a) Except as provided in paragraph (b) of this section, a complainant, agent, or claimant may file a request for review at any time up to 20 calendar days after receipt of the Board's notice of final decision on the complaint or claim, except that the deadline shall be 15 calendar days in connection with any class complaint or claim. A request for review shall be deemed filed on the date it is postmarked, or in the absence of a postmark, on the date it is received by the Equal Employment Opportunity Commission. Any statement or brief in support of the request for review must be submitted to the Equal Employment Opportunity Commission and to the Board within 30 calendar days of filing the request for review. For the purposes of this part, the decision of the Board shall be final only when the Board makes a determination on all of the issues in the complaint or claim, including whether or not to award attorney's fees and/or costs. If a decision to award attorney's fees and/or costs is made, the decision shall not be final until the procedure is followed for determining the amount of such award as set forth in § 268.315(c) of Subpart C.

(b) The time limits within which a request for review must be filed will not be extended unless, based upon a written statement by the complainant, agent, or claimant showing that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of a request for review within the prescribed time limits, the Equal Employment Opportunity Commission determines that the time limit should be extended.

§ 268.804 Procedures.

The Office of Review and Appeals of the Equal Employment Opportunity Commission shall review the complaint or claim file and all relevant written representations made to the Commission. The Office may return a complaint to the Board with a request for further investigation or a hearing if it considers such action necessary. There is no right to a hearing before the Office of Review and Appeals. The Office of Review and Appeals shall issue a written finding setting forth its reasons for its findings and shall transmit such findings for consideration by the Board. The Office of Review and Appeals shall also issue copies of its findings to the complainant, agent or claimant.

§ 268.805 Review and consideration.

(a) The Commissioners may, in their discretion, reopen and reconsider any findings of the Office of Review and Appeals when the Board or the complainant, agent, or claimant requesting reopening or reconsideration submits written argument or evidence which tend to establish that:

(1) New and material evidence is available that was not readily available when the previous finding was issued;

(2) The previous finding involves an erroneous interpretation of law or regulation or misapplication of established policy; or

(3) The previous finding is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

(b) If the Commissioners, in their discretion, reopen and reconsider any previous findings of the Office of Review and Appeals, the Commissioners shall transmit their findings for consideration by the Board. The Commissioners shall also issue copies of their findings to the complainant, agent or claimant.

Subpart I—Equal Pay

§ 268.901 General prohibition of discrimination.

The Board shall not discriminate among employees on the basis of sex by paying wages to employees at a rate less than the rate at which it pays wages to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to:

(a) A seniority system;

(b) A merit system;

(c) A system which measures earnings by quantity or quality of production; or

(d) A differential based on any factor other than sex or otherwise not prohibited by this regulation.

§ 268.902 Record keeping.

(a) The Board shall preserve any records which are made in the regular course of business which relate to the payment of wages, wage rates, job evaluations, job descriptions, merits systems, seniority systems, descriptions of practices, or other matters which described or explain the basis for payment of any wage differential to employees of the opposite sex, and which may be pertinent to determination of whether such differential is based on a factor other than sex.

(b) Such records are to be kept for at least six years.

§ 268.903 Procedure.

(a) Wages withheld in violation of this subpart have the status of unpaid minimum wage or unpaid overtime compensation.

(b) Any employee who believes he or she has received unequal pay due to discrimination based on sex may seek recovery of withheld wages by filing a complaint of discrimination under Subpart C of this regulation, if a complaint of individual discrimination, or Subpart D of this regulation, if a class action, except that civil actions shall be filed pursuant to § 268.904 of this subpart.

§ 268.904 Right to file civil action for judicial review.

A complainant, agent, or claimant, under this subpart is authorized to file a civil action against the Board in an appropriate United States District Court within six years of matter causing the complainant, agent, or claimant to believe he or she has been denied equal pay.

PART 269—POLICY ON LABOR RELATIONS FOR THE FEDERAL RESERVE BANKS

Sec.

269.1 Definition of a labor organization.
269.2 Membership in a labor organization.
269.3 Recognition of a labor organization and its relationship to a Federal Reserve Bank.
269.4 Determination of appropriate bargaining unit.
269.5 Elections.
269.6 Unfair labor practices.
269.7 Approval of agreement and required contents.
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269.10 Time for internal labor organization business, consultations and negotiations.
269.11 Federal Reserve System Labor Relations Panel.
269.12 Amendment.

AUTHORITY: Sec. 11, 38 Stat. 261; 12 U.S.C. 248.

SOURCE: 48 FR 32331, July 15, 1983, unless otherwise noted.

§ 269.1 Definition of a labor organization.

When used in this part, the term "labor organization" means any lawful organization of any kind, or any employee representation group, which exists for the purpose, in whole or in part, of dealing with any Federal Reserve Bank concerning grievances, personnel policies and practices, or other matters affecting the working conditions of its employees, but the term shall not include any organization:

(a) Which asserts the right to strike against the government of the United States, the Board of Governors of the Federal Reserve System, or any Federal Reserve Bank, or to assist or participate in any such strike, or which imposes a duty or obligation to conduct, assist or participate in any such strike; or (b) which fails to agree to refrain from seeking or accepting support from any organization which employs coercive tactics affecting any Federal Reserve Bank's operations; or (c) which advocates the overthrow of the constitutional form of the government of the United States; or (d) which discriminates with regard to the terms or conditions of membership because of race, color, sex, creed, age or national origin.

§ 269.2 Membership in a labor organization.

(a) Any employee of a Federal Reserve Bank (hereinafter referred to as "Bank") is free to join and assist any existing labor organization or to participate in the formation of a new labor organization, or to refrain from any such activities except that officers and their administrative or confidential assistants, managers and other supervisory personnel, secretaries to all such persons and all employees engaged in Bank personnel work shall not be represented by any labor organization.

(b) The rights described in paragraph (a) of this section for employees do not extend to participation in the management of a labor organization, or acting as a representative of any such organization, where such participation or activity would conflict with law or the duties of an employee.

(c) Notwithstanding anything stated in paragraph (a) of this section, professional employees of a Bank shall not be represented by a labor organization which represents other employees of the Bank unless a majority of the professional employees eligible to vote specifically elect to be represented by such labor organization. However, the professional employees of a Bank may, if they so choose, be represented by a separate labor organization of their own, or by no labor organization at all.

(d) Notwithstanding anything stated in paragraph (a) of this section, the guards of a Bank shall not be members of a labor organization which represents other categories of employees of the Bank. However, the guards of a Bank may, if they so choose, be represented by a separate labor organization of their own, or by no labor organization at all.

§ 269.3 Recognition of a labor organization and its relationship to a Federal Reserve Bank.

(a) Any labor organization shall be recognized as the exclusive bargaining representative of the employees in an appropriate unit of a Bank when that organization has been selected by the employees in said unit pursuant to the procedure set forth in § 269.5. A unit may be established in a Bank on any basis which will ensure a clear and identifiable community of interest among the employees concerned, and will promote effective relationships and the efficiency of the Bank's operations, but no unit shall be established solely on the basis of the extent to which a labor organization or employees in the proposed unit may have sought organization.

(b) When a labor organization has been recognized as the exclusive representative of employees in an appropriate unit, it shall be entitled to act for and to negotiate agreements in good faith covering all employees in the unit, and it shall be responsible for representing the interests of all such employees without discrimination and without regard to whether they are members of that labor organization or not, provided that nothing in this Policy shall prevent an employee from adjusting his or her grievance without the intervention of the recognized labor organization. The labor organization shall be given notice of the adjustment and a reasonable opportunity to object on the sole ground that it is in conflict with the terms of the collective bargaining agreement.

(c) A Bank, through appropriate officials, shall have the obligation to meet at reasonable times with representatives of a recognized labor organization to negotiate, in good faith, with respect to personnel policies and practices affecting working conditions for employees, provided that they do not involve matters in any of the following areas:

(1) The purposes and functions of the Bank; the compensation of and hours worked by employees; any classification system used to evaluate positions; the budget of the Bank; the retirement system; any insurance or other benefit plans; internal security operations; maintenance of the efficiency of Bank operations including the determination of work methods; the right to contract out; the determination as to manpower requirements; use of technology and organization of work; and action to meet emergency situations;

(2) Management rights as to the direction of employees, including hiring, promotion, transfer, classification, assignment, layoffs, retention, suspension, demotion, discipline and discharge, provided that on matters involving the procedures to be followed by a Bank for the exercise of its rights under this subparagraph, a Bank shall, upon request, discuss such procedures with a recognized labor organization, but shall not be required to negotiate for an agreement as to them;

(3) All Bank matters specifically governed by applicable laws or regulations.

The obligation under this paragraph to negotiate with regard to certain matters shall include the execution of a written contract incorporating any agreement reached, but does not compel either a Bank or a labor organization to agree to a particular proposal or to make any concession during such negotiations.

(d) At the time it requests an election to be held, any labor organization seeking recognition shall submit to a Bank a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(e) Subject to the provisions of § 269.8, the exclusive recognition of a labor organization shall not preclude any employee, regardless of labor organization membership, from bringing matters of personal concern not governed by a collective bargaining agreement to the attention of appropriate officers, managers or supervisory personnel in accordance with applicable law, rule, regulation, or established Bank policy, or from choosing his or her own representative in such matters.

§ 269.4 Determination of appropriate bargaining unit.

(a) If a labor organization asserts in writing to a Bank that it holds cards requesting a representation election signed by at least thirty percent (30%) of the employees in a unit which that organization considers to be an appropriate bargaining unit, the labor organization and the Bank shall each designate a representative who together shall request the American Arbitration Association (hereinafter referred to as "Association") to submit to them from its National Panel of Professional Labor Arbitrators a list of seven (7) impartial, qualified professional arbitrators. The two designated representatives shall meet promptly and, by alternately striking names from the list, arrive at the remaining person who, together with the two representatives, shall constitute a Special Tribunal to rule on the labor organization's request for an election. The impartial arbitrator shall always act as the Chairperson of any Special Tribunal duly constituted under this section.

(b) In the absence of an agreement between the labor organization and the Bank on the appropriate unit, the Tribunal shall investigate the facts, hold hearings if necessary, and issue a decision as to the appropriateness of the unit for the purposes of conducting a representation election for exclusive recognition and as to related issues submitted for consideration. The expenses for this proceeding, including the fees of the association and of the arbitrator, shall be borne equally by the labor organization and the Bank. If either the Bank or the labor organization should disagree with the Special Tribunal's decision, the party in disagreement may appeal within thirty (30) calendar days to the Federal Reserve System Labor Relations Panel referred to in § 269.11, and the decision of the System Panel shall be final and binding on the parties.

(c) If there is any dispute as to whether a labor organization holds cards signed by at least thirty percent (30%) of the employees in a unit claimed by a labor organization as appropriate or subsequently determined by the Special Tribunal as appropriate, the dispute shall be resolved by the Chairperson of the Special Tribunal, acting as a single impartial arbitrator. The expenses of such procedure, including the impartial arbitrator's fee, shall be borne equally by the labor organization and the Bank. The decision of the Chairperson of the Special Tribunal shall be final and binding and shall not be subject to appeal to the Federal Reserve System Labor Relations Panel.

§ 269.5 Elections.

(a) Once there has been a final determination of the existence of an appropriate bargaining unit under the procedure in § 269.4, and a showing by a labor organization that it has cards signed by at least thirty percent (30%) of the employees in such unit requesting a representation election, an election shall be ordered by the Special Tribunal. A labor organization shall be recognized as the exclusive bargaining representative of the unit if it is selected by a majority of the employees in the unit actually voting.

(b) The election shall be held under the auspices of the Association and shall be subject to its election rules and regulations. However, if there should be any conflict between such rules and regulations and the provisions of this Policy, the latter shall prevail. The fees charged by the Association for its election service shall be borne equally by the labor organization and the Bank.

(c) An election to determine whether a labor organization should continue as the exclusive bargaining representative of a particular unit shall be held when requested by a petition or other bona fide showing by at least thirty percent (30%) of the employees of that unit. Any dispute as to whether thirty percent (30%) of the employees requested such an election shall be resolved by the same procedure as that set forth in § 269.4(b). The election shall be held under the auspices of the Association in the same manner described in paragraph (b) of this section. The recognition of a labor organization as the exclusive bargaining representative of a unit shall be revoked if a majority of the employees in the unit who actually vote signify approval of such revocation.

(d) Only one election may be held in any unit in a twelve (12) month period to determine whether a labor organization should become, or continue to be recognized as, the exclusive representative of the employees in that unit.

(e) Upon receipt of a request for an election from a labor organization under § 269.4(a), it shall be incumbent on the Bank, labor organization and all others to refrain from any conduct, action or policy that interferes with or restrains employees from making a fair and free choice in selecting or rejecting a bargaining representative consistent with the right of the Bank, labor organization or employees to exercise privileges of free speech in the expression of any views, argument or opinion, or the dissemination thereof, whether in oral, written, printed, graphic or visual form.

(f) The Special Tribunal shall hear and decide any post-election objections of a Bank or labor organization filed with it claiming that a violation of paragraph (e) of this section has improperly affected the outcome of the election. Such objections must be filed with the Special Tribunal no later than five (5) business days after the date of election. In the event of such violation by a Bank, labor organization or other individuals or organizations which the Special Tribunal finds sufficient to have prejudiced the outcome of an election, appropriate remedial action shall be taken in the form of setting aside the election results and ordering a new election, provided, however, that an appeal from the order of the Special Tribunal may be taken within thirty (30) calendar days to the Federal Reserve System Labor Relations Panel by either the affected Bank or labor organization. The ruling of the System Panel shall be final and binding. Neither the Special Tribunal nor the Federal Reserve System Labor Relations Panel shall have the authority to direct a Bank to recognize a labor organization as the exclusive collective bargaining representative without a valid election being held in which a majority of the employees actually voting have so designated such labor organization.

(g) The Special Tribunal and the Federal Reserve System Labor Relations Panel will adhere to any rules and regulations promulgated by the Board of Governors for the administration of the provisions of paragraphs (e) and (f) of this section.

§ 269.6 Unfair labor practices.

(a) It shall be an unfair labor practice for a Bank to: (1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in § 269.2(a); (2) dominate or interfere with the formation or administration of any labor organization, or to contribute financial or other support to it; (3) encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment; (4) refuse to bargain collectively with the representatives of its employees subject to the provisions of § 269.3 (b) and (c).

(b) It shall be an unfair labor practice for a labor organization, its agents or representatives to: (1) Restrain or coerce employees in the exercise of the rights guaranteed in § 269.2(a); (2) cause or attempt to cause a Bank to Discriminate against an employee in violation of paragraph (a)(3) of this section; (3) refuse to bargain collectively with a Bank, provided the labor organization is the exclusive representative of a unit of employees.

(c) Notwithstanding anything previously stated in this section, the expression of any view, argument or opinion, or the dissemination thereof, whether in oral, written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice, if such expression contains no threat of reprisal or force, or promise of benefit.

(d) The Federal Reserve System Labor Relations Panel will adhere to the rules and regulations promulgated by the Board of Governors for the prevention and remedy of the unfair labor practices listed herein.

§ 269.7 Approval of agreement and required contents.

Any agreement entered into with a labor organization as the exclusive representative of employees in a unit must be approved by the President of the Bank or a designated officer representative. All agreements with labor organizations shall also be subject to the requirement that the administration of all matters covered by the agreement shall be governed by the provisions of applicable laws and Federal Reserve System rules and regulations, and the agreement shall at all times be applied subject to such laws and regulations.

§ 269.8 Grievance procedures.

(a) Subject to the provisions of § 269.3(b), an agreement entered into with a labor organization as the exclusive representative of employees in a unit may contain a grievance procedure, applicable only to employees in such unit and which shall be the exclusive means for a labor organization and/or an employee to obtain resolution of a grievance arising under such agreement.

(b) Grievance procedures established by a labor agreement may also include provisions for arbitration of unresolved grievances by a tripartite panel under the Voluntary Labor Arbitration Rules of the Association with the impartial arbitrator selected by the Bank and labor organization representatives on the arbitration panel to be the Chairperson. In such event, arbitration shall extend only to grievances which involve the interpretation and application of specific provisions of a labor agreement and not to any other matters or to changes in or proposed changes in the agreement. Arbitration may only be invoked by labor organization on behalf of individual employees with their concurrence.

§ 269.9 Mediation of negotiation impasses.

In the event of an impasse in negotiations between the parties for a collective bargaining agreement, either the labor organization or the Bank may request the appointment of a qualified neutral person as a mediator to assist the parties in attempting to resolve the impasse. The parties will meet promptly with the mediator, and all matters discussed, as well as any documents submitted, shall not be publicly divulged for any reason. The cost of the mediator shall be borne equally by the parties.

§ 269.10 Time for internal labor organization business, consultations and negotiations.

Solicitation of memberships, dues or other internal labor organization business shall be conducted during the nonduty hours of the employees concerned. Officially requested or approved consultation between management executives and representatives of a labor organization shall, whenever practicable, be conducted on official time, but the President or a duly authorized officer of a Bank may require that negotiations with a labor organization be conducted during the nonduty hours of the Bank.

§ 269.11 Federal Reserve System Labor Relations Panel.

There shall be established a Federal Reserve System Labor Relations Panel, which shall consist of three members: one member of the Board of Governors of the Federal Reserve System, who shall be Chairperson of the Panel, and two public members. Each member shall be selected by the Board of Governors; provided, however, that the public members shall not have any present or past affiliation with the Federal Reserve System. Initially, one of the two public members shall be appointed for a term of two years, and the other for a term of three years. Thereafter, each public member shall be appointed for a term of three years, except that in the case of an unexpired term of a former member, the successor shall be appointed to fill such unexpired term. Upon the expiration of their term of office, public members may continue to serve until their successors are appointed and have qualified. A public member may be removed by the Board only upon notice and hearing, and only for neglect of duty or malfeasance in office. The Panel shall be responsible for the duties assigned to it as set forth in this Policy.

§ 269.12 Amendment.

This policy may be amended upon appropriate legal notice to all Federal Reserve Banks and labor organizations recognized, or seeking recognition, at any such Bank under this Policy. In no instance shall an amendment be applied retroactively.

PART 269a—DEFINITIONS

Sec.
269a.1 Party.
269a.2 Party in interest.
269a.3 Intervenor.
269a.4 Investigator.
269a.5 Hearing officer.

AUTHORITY: Sec. 11, 38 Stat. 261; 12 U.S.C. 248.

SOURCE: 35 FR 8919, June 10, 1970. Redesignated at 48 FR 32334, July 15, 1983, unless otherwise noted.

EDITORIAL NOTE: For nomenclature change to Part 269a, see 48 FR 32334, July 15, 1983.

§ 269a.1 Party.

The term "Party" means any person, employee, group of employees, labor organization, or bank as defined in § 269.2 of this chapter (a) filing a charge, petition, application, or rquest pursuant to these rules and regulations, (b) named as a party in a charge, complaint, petition, application, or request, or (c) whose intervention has been permitted or directed by the investigator, the hearing officer, or the panel, as the case may be, but nothing shall be construed to prevent the panel, or any officer designated by it, from limiting any party's participation in the proceedings to the extent of his interest as determined by the investigator, hearing officer, or panel.

§ 269a.2 Party in interest.

The term "party in interest" means any person, employee, group of employees, labor organization, or bank that will be or is directly affected by the resolution of any charge, complaint, petition, application, or request presented to or being considered by the panel or its designated officers. Any (a) labor organization (not a charging party nor a charged party) attempting to organize the employees of a bank or that is or was recently a party to a collective bargaining agreement with a bank named as a party in a charge, complaint, petition, application, or a request, or (b) bank (not a charging party nor a charged party) that acts as the employer of any person named in a charge, complaint, petition, or request shall be deemed to be also a party in interest and shall be entitled to notification and service of all relevant procedures and documents.

§ 269a.3 Intervenor.

The term "intervenor" means the party in a proceeding whose intervention has been permitted or directed by the panel or its designated officer.

§ 269a.4 Investigator.

The term "investigator" means the officer designated by the panel to investigate and determine whether or not a complainant has established a prima facie case, as defined in § 292.210 of this subchapter.

§ 269a.5 Hearing officer.

The term "hearing officer" means the officer designated by the panel to conduct hearings pursuant to § 292.420 et seq. of this subchapter and whose duties and power are enumerated in § 292.442 of this subchapter.

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269b.111 Filing of charges.
269b.112 Contents of the charge.
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AUTHORITY: Sec. 11, 38 Stat. 261; 12 U.S.C. 248.

SOURCE: 35 FR 8920, June 10, 1970. Redesignated at 48 FR 32334, July 15, 1983, unless otherwise noted.

EDITORIAL NOTE: For nomenclature change to Part 269b, see 48 FR 32334, July 15, 1983.

CHARGES OF VIOLATIONS OF § 269.6 (OF THE POLICY)

§ 269b.110 Charges.

A charge that any bank or labor organization, or agents or representatives of a bank or labor organization, has engaged in or is engaging in any act prohibited under § 269.6 of the policy or has failed to take any action required by § 269.6 of the policy may be filed by any party in interest, or its representative, within 60 days after the alleged violations or within 60 days after the charging party has become or should have become aware of the alleged violation.

§ 269b.111 Filing of charges.

Any charge pursuant to § 269b.110 shall be in writing and signed. An original and three copies of such charge, together with one copy for each charged party named, shall be transmitted to the Secretary of the Federal Reserve System Labor Relations Panel, 20th Street and Constitution Avenue NW., Washington, D.C. 20551. Within 5 days after receipt of a properly filed charge that meets the formal requirements set forth in § 269b.112, the Secretary will cause a copy of such charge to be served on each party against whom the charge is made and upon all other potential parties in interest.

§ 269b.112 Contents of the charge.

A charge shall contain the following:

(a) The full name, address, and telephone number of the person, bank, or labor organization making the charge (hereinafter referred to as the charging party) and of the person signing the charge who shall state also his relation to or his capacity with the complainant. Where discrimination is alleged, all known discriminatees shall be named;

(b) The name, address, and telephone number of the bank or labor organization against whom the charge is made (hereinafter referred to as the respondent) and of any parties in interest;

(c) A clear and concise statement of the facts constituting the alleged unfair labor practice, including the time and place of occurrence of the particular acts, and a statement of the portion or portions of the policy alleged to have been violated. A charge shall not incorporate by reference affidavits or other documents submitted in support of the charge;

(d) A statement of the relief sought;

(e) A statement of any other remedies invoked for the redress of the alleged violations of the policy and the results, if any, of their invocation. If the issue in such charge is subject to an established grievance procedure, the complainant must irrevocably elect, prior to the completion of the first applicable step of the grievance procedure, whether he will invoke the grievance procedure or whether he will invoke the unfair labor practice procedures of the panel. A charge which is withdrawn or rejected by the panel as defective prior to the institution of any formal proceedings by the panel shall not prejudice the filing of a grievance on the same matter, unless the parties otherwise so provide;

(f) A declaration by the person signing the charge, that its contents are true and correct to the best of his knowledge and belief, such declaration to be subject to applicable provisions of the Federal Criminal Code (18 U.S.C. 1001).

§ 269b.113 Withdrawal or settlement.

A charge may be withdrawn or settlement of the matter may be reached without consent of the panel at any time. In connection with any such settlement the parties in interest shall prepare and sign a settlement agreement which shall record that the settlement is mutually satisfactory, shall stipulate any occurrences which constituted unfair labor practices and shall set forth the terms of the settlement.

§ 269b.120 Answer to a charge.

The respondent shall file an answer to the charge with the Secretary of the panel within 15 days after service of the charge. Upon application and for good cause shown, the panel may extend the time within which the answer shall be filed. One copy of the answer shall be served on each party with proof of service furnished to the Secretary, and the original, which shall be signed, and four copies shall be filed with the Secretary.

§ 269b.121 Contents of answer.

The answer shall contain:

(a) A specific admission or denial, and where appropriate, explanation thereof; or if the respondent is without knowledge of the allegation, he shall so state and such statement shall operate as a denial. Admissions or denials may be to all or part of an allegation but shall be responsive to the substance of the allegation;

(b) A specified, detailed statement of any affirmative defense;

(c) A clear and concise statement of the facts and matters of law relied upon constituting the grounds of defense.

Any allegation of the charge not denied in the answer may be deemed admitted and may be so found by the panel.

PRELIMINARY INVESTIGATION

§ 269b.210 Referral to National Center for Dispute Settlement.

(a) Within 5 days after the answer to the charge has been or should have been filed, the panel may refer the matter, accompanied by a general or particularized request, to the National Center for Dispute Settlement of the American Arbitration Association (hereinafter referred to as the Center) to make an investigation and to determine whether the charging party has established a prima facie case.

(b) For the purposes of this part, a "prima facie case" means a case where allegations of an unfair labor practice that have been presented give reasonable cause to believe that such practice may have occurred, but where evidentiary proceedings are necessary for determination of whether the allegations are substantiated.

(c) The Center may use its own personnel or may hire individuals on a contract basis to conduct such investigations. The panel may consolidate or sever proceedings conducted pursuant to this part.

(d) Any party may request the Center or other appointing authority to withdraw appointment of the investigator within 3 days after designation on the basis of previously demonstrated personal bias, conflict of interest, or prejudice. Such a request shall set forth in detail the matter alleged to constitute grounds for disqualification. Denial of a request by the Center or other appointing authority shall be substantiated in writing and transmitted to the requesting party, and shall be submitted to the panel together with the complete report of the investigator required in § 269b.240(b).

§ 269b.220 Priority; acceleration of proceedings.

(a) A charge of "refusal to bargain" or a charge that, if sustained, would require the setting aside of an election or the conduct of a new election shall be given priority.

(b) The parties, individually or jointly, may petition the panel at any time to invoke immediately the formal hearing procedures set forth in § 269b.410. They may also petition the panel to entertain the matter itself without prior investigation and/or without the formal hearing procedure set forth in § 269b.410. The panel is empowered also on its own motion to so accelerate disposition of the case.

(c) Before accelerating a case the panel may utilize whatever proceedings it may deem appropriate and timely to allow parties in interest to comment on the proposed course of action.

§ 269b.230 Assessment of costs; posting of bond.

(a) The panel shall normally bear the costs of an investigation conducted pursuant to § 269b.210, but the panel may require that the charging party, the respondent, and/or other parties in interest or intervenors, or several of them, shall bear a portion or all of the costs therefor. With respect to each case where an investigation is directed by the panel, the charging party may, in the discretion of the panel, be required to file a cost bond, or equivalent security, of $500, unless the panel fixes a different amount.

(b) Among the circumstances that may be the basis for payment of costs by other than the panel are cases where a clearly spurious charge has been filed or where the filing of a charge was necessary to redress the respondent's flagrant misconduct.

(c) The bond or equivalent security shall be to secure the payment of the costs of the investigation as may be assessed by the panel. In those cases where the panel does not assess such costs, the bond posted and the cost thereof shall be reimbursed to the charging party. The panel may require also the posting of a cost bond by the respondent or other party to the proceeding, who shall be entitled to reimbursement of the cost of the bond in the event that no costs of investigation are assessed upon such party by the panel.

(d) Notification of the panel's decision that a bond shall be required shall be effected by registered mail, such notice to advise of the amount of the bond required and the period by which it shall be posted.

(e) Absent good cause shown, failure of a party to file timely such cost bond or equivalent security may be ground for dismissal or other administrative sanctions deemed appropriate by the Panel.

§ 269b.240 The investigation.

(a) The purpose of the investigation is (1) to ascertain, analyze, and apply the relevant facts in order to determine whether or not formal proceedings are warranted and (2) to assist, by mediation and other appropriate means, the parties to reach a mutually satisfactory resolution of the issues as an alternative to the hearing process. In so doing, the investigator is not limited to the allegations set forth in the charge and may advise the charging party to amend his charge. In addition, he should adduce facts pertaining to the remedy as well as to the alleged violation. Investigation should also adduce facts pertaining to the jurisdiction of the panel and the timeliness of the charge. If the charge is untimely on its face, no investigation shall be required except to determine whether or not attending circumstances warrant waiving the time requirements, set forth in § 269b.110. The investigator may request the appearance of parties and witnesses, may cause, the production of relevant document, and may take or cause depositions to be taken.

(b) When the investigation has been completed, the Center shall issue a written determination whether the charging party has established a prima facie case, whether the charge was timely filed, and whether the charge is within the jurisdiction of the panel, and reasons therefor. This determination shall be served upon the panel and all parties. The panel shall receive also the complete report of the investigator.

APPEAL FROM THE CENTER'S DETERMINATION

§ 269b.310 Appeal rights.

Where the investigator has found that a prima facie case does not exist, a party, including an intervenor but excluding the respondent or other parties having the same interest as the respondent, within 5 days after receiving the Center's determination may petition the panel to set aside the determination and to cause formal proceedings, set forth in § 269b.410, to be invoked. The panel may grant such petition only on grounds that the Center or its agents were arbitrary, capricious, or acted contrary to law or the policy, or that the investigator's determination is clearly erroneous. The filing requirements for such a petition shall be the same as that for the filing of a charge, as set forth in § 269b.111.

§ 269b.320 Proceedings before the panel.

The panel shall issue its decision within 15 days after the receipt of the petition provided for in § 269b.310 or by the end of that period shall announce that it will require briefs by the parties. Such announcement shall specify the requirements as to contents of the briefs, and the time for submission, which shall vary to meet the circumstances of the matter appealed. The panel, at such time, may also require oral argument or the production of evidence or may so order oral argument and/or the production of evidence after examination of the briefs. The panel shall issue its final decision within 20 days after briefs have been filed, evidence has been produced, or oral argument has been conducted.

FORMAL PROCEEDINGS

§ 269b.410 Notice of hearing.

If formal proceedings are found to be needed under the above procedures, and if no satisfactory settlement has been reached within 5 days after finding that a prima facie case exists, the Secretary of the panel, unless there is cause for granting an extension of time, shall issue and cause to be served upon the parties a notice of hearing. The panel shall appoint, pursuant to § 269b.420, a hearing officer to hold a hearing and issue a report to the panel containing findings of fact, conclusions of law, and recommendations including, where appropriate, remedial action to be taken and notices to be posted. The Secretary shall furnish to the hearing officer the investigator's report and all other relevant information in the panel's possession.

§ 269b.420 Designation of hearing officer.

(a) The panel, absent special circumstances, shall employ the center to select the hearing officer to conduct the hearing at a site most convenient to the parties and witnesses. The individual who performed the investigation, pursuant to § 269b.210, shall be barred from acting as a hearing officer on the same matter, unless all parties in interest agree to his participation. The selection of the hearing officer, to the extent practicable, shall be done with the concurrence of the parties.

(b) Any party may request the hearing officer, at any time following his designation and before the filing of his decision, to withdraw on grounds of previously demonstrated personal bias, conflict of interest, or prejudice by filing with him promptly upon the discovery of the alleged facts a timely affidavit setting forth in detail the matters alleged to constitute grounds for disqualification. If, in the opinion of the hearing officer, such affidavit is filed with due diligence and is sufficient on its face, he shall forthwith disqualify himself and withdraw from the proceeding. If he does not so withdraw, he shall so rule upon the record, stating the grounds for his ruling and proceed with the hearing, or, if the hearing has closed, he shall proceed with the issuance of his decision, and his ruling shall be subject to the same review by the panel that is given to the rest of his decision.

(c) The costs of conducting the hearing and of the hearing officer shall be borne by the panel. Witness fees and expenses shall be paid by the party at whose instance the witnesses appear.

§ 269b.430 Contents of notice of hearing.

The notice of hearing shall include:

(a) A copy of the charge;

(b) A statement of the time of the hearing which shall be not less than 10 days after service of the notice of hearing, except in extraordinary circumstances. All charges involving a "refusal to bargain" allegation and all charges, if sustained, that would require the setting aside of an election, or the conducting of a new election shall be given first priority;

(c) A statement of the place and nature of hearing;

(d) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(e) A reference to the particular section of the policy and rules and regulations of this chapter involved;

(f) A copy of the determination, if any, made causing the invocation of these formal proceedings.

§ 269b.440 Conduct of hearing.

(a) Hearing shall be public unless otherwise ordered by the hearing officer or the panel. An official reporter shall make the only official transcript of such proceedings.

(b) Copies of the official transcript will not be provided to the parties, but may be purchased by arrangement with the official reporter or with such costs as the panel may otherwise assess, or may be examined in the offices of the panel and/or the hearing officer subject to such conditions as the panel may prescribe.

(c) A charging party in asserting that an unfair labor practice has been committed within the meaning of the policy, shall have the burden of proving the allegations of the charge, or the amended charge, by a preponderance of the evidence.

(d) The parties shall not be bound by the technical rules of evidence, but the hearing officer, may, in his discretion, exclude any evidence or offer of proof if he finds that its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion.

§ 269b.441 Rights of parties.

(a) Any party shall have the right to appear at such hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses as may be required for a full and true disclosure of the facts, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing officer. Five copies of such documentary evidence shall be submitted unless the hearing officer permits a reduced number for good cause shown.

(b) Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing.

(c) Any party shall be entitled to file a brief to the hearing officer within 10 days after the close of the hearing, but no reply brief may be filed except upon special permission of the hearing officer. A party filing a brief must file the original and one copy with the hearing officer along with proof of service of a copy of such brief to all parties. Requests for extension of time to file briefs must be made to the hearing officer who must receive the request at least 3 days prior to the expiration of time fixed for filing of briefs and notice of the request shall be served simultaneously on all other parties, and proof of service shall be furnished. If a request for extension of time is based on the need for a copy of the transcript prior to filing a brief, such request must be made to the hearing officer before the hearing is closed and must be ruled on prior to the close of the hearing.

§ 269b.442 Duties and powers of the hearing officer.

The hearing officer shall inquire fully into the facts as to whether the respondent has engaged or is engaging in an unfair labor practice as set forth in the charge or the amended charge. The hearing officer shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the panel, subject to the rules and regulations in this subchapter, to:

(a) Grant requests for attendance of witnesses and production of documents;

(b) Rule upon petitions to quash requests made pursuant to paragraph (a) of this section;

(c) Call, examine, and cross-examine parties and witnesses as may be required for a full and true disclosure of the facts and to introduce into the record documentary or other evidence;

(d) Rule upon offers of proof and receive relevant evidence;

(e) Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(f) Limit lines of questioning or testimony which are repetitive, cumulative, or irrelevant;

(g) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper question;

(h) Hold such prehearing conferences as may be necessary to expedite proceedings and hold such other conferences for the settlement or simplification of the issues by consent of the parties or upon his own motion;

(i) Dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions referred to the hearing officer by the panel, and motions to amend pleadings, also to recommend dismissal of cases or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of the hearing officer's report and recommendations;

(j) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(k) Require the parties, if necessary, to file written briefs in support of their positions;

(l) Take any other action necessary under the foregoing and authorized by the rules and regulations in this subchapter.

In the event the hearing officer designated to conduct the hearing becomes unavailable, the panel may designate another hearing officer for the purpose of further hearing or issuance of a report and recommendation on the record as made, or both.

§ 269b.443 Motions before or after a hearing.

All motions (including motions for intervention), other than those made during a hearing, shall be made in writing to the Secretary of the panel, shall briefly state the relief sought, shall set forth the grounds for such motion, and shall be accompanied 3 days thereafter by proof of service on all parties. Answering statements, if any, must be served on all parties and the original thereof, together with two copies and statement of service, shall be filed with the Secretary within 5 days after service of the moving papers, unless the Secretary directs otherwise. Motions may be referred to the hearing officer whose ruling shall be made upon the record or the motion may be stayed until such time as the panel reviews the hearing officer's report and recommendations.

§ 269b.444 Objection to conduct of hearing; other motions during hearing.

Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, or any other motion during the course of the hearing, including a request to allow intervention, may be stated orally or in writing accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing and such objection shall not stay the conduct of the hearing. Automatic exceptions will be allowed to all adverse rulings and shall be considered by the panel upon its review of the hearing officer's report and recommendations, if exception to the ruling is included in a statement of exceptions submitted to the panel after the close of the hearing, subject to the requirements of § 269b.520.

§ 269b.450 Submission of hearing officer's report to the panel.

After the close of the hearing, and the receipt of briefs, if any, the hearing officer shall prepare a report and recommendations, containing findings of fact, conclusions of law, including judgments as to the credibility of witnesses where appropriate, and the reasons or basis therefor, and recommendations as to the disposition of the case, and, where appropriate, including the remedial action and notices to be posted. After he has caused his report and recommendations to be served promptly on all parties to the proceeding, he shall transfer the case to the panel including his report and recommendations and the complete record. Such submission shall be made within 20 days after the close of the hearing and the receipt of briefs, if any, unless otherwise extended by the panel. The record shall include the charge, notice of hearing, service sheet, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, documentary evidence, exhibits, and any briefs or other documents submitted to the parties.

Panel Review of Hearing Officer's Report and Recommended Decision

§ 269b.510 Review by panel.

The panel shall review the report and recommendations of each hearing officer, the record of the hearing, and such other documents as enumerated in § 269b.450, whether or not any party files an appeal, unless the parties file with the panel a settlement agreement within 10 days after service of the hearing officer's report upon them. In the course of such review, the panel may require oral argument or written briefs on any relevant issue within such time limits as the panel may prescribe, and may reopen the record in any case and receive further evidence.

§ 269b.520 Exceptions to hearing officer's report.

(a) Any party may file with the panel exceptions to the hearing officer's report and recommendations, and any ruling contained therein, if made within 10 days after service of the report and recommendations. The Panel may, for good cause shown, extend the time for filing such exceptions upon written request, with copies served simultaneously on the other parties, received not later than 3 days before the date exceptions are due. Requests for oral argument will not be considered unless filed with exceptions.

(b) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived, although the panel may on its own motion rule upon any matter in the report and recommendations.

(c) Any exception which fails to comply with the following requirements may be disregarded:

(1) The exceptions shall set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken;

(2) The exceptions shall identify the part of the hearing officer's report to which objection is made;

(3) The exceptions shall designate by precise citation of page the portions of the record relied on, shall state the grounds for the exceptions, and shall include the citation of authorities unless set forth in a supporting brief.

(d) Any brief in support of exceptions shall contain no matter not included within the scope of the exceptions and shall contain in the order indicated, the following:

(1) A concise statement of the case containing all that is material to the consideration of the questions presented;

(2) A specification of the questions involved and to be argued;

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(e) Answering briefs to the exceptions, and cross-exceptions and supporting briefs will not be permitted without special leave of the panel. Requests for oral argument will not be considered unless accompanying such petition for special leave.

(f) Five copies of exceptions and briefs must be filed with the panel along with a statement of service of copies of the exceptions and supporting briefs upon all parties.

§ 269b.530 Briefs in support of the hearing officer's report.

Any party may file a brief in support of the hearing officer's report and recommendations subject to the same time limits and rules pertaining to filing exceptions and briefs in support thereof, as set forth in § 269b.520.

§ 269b.540 Action by the panel.

After considering the hearing officer's report and recommendations, the record, any other documents, any exceptions filed, and any oral argument permitted, the panel shall issue its written decision. Upon finding that the respondent is engaging in or has engaged in an unfair labor practice, the panel shall order the respondent to cease and desist from such conduct and may require the respondent to take such affirmative corrective action as the panel deems appropriate to effectuate the Policy. Such action by the panel may include, but shall not be limited to, orders to provide back pay, provide reinstatement, set aside an election, bargain, and award recognition. Upon finding no violation of the policy, the panel shall dismiss the case. The panel's decision and order setting forth the remedial action, if any, required shall be conspicuously posted by the parties.

COMPLIANCE

§ 269b.610 Procedures.

Where remedial action is ordered or provided for in a settlement agreement, a report to the panel that such action has been taken and that compliance with the decision and orders of the panel has been effected shall be submitted within the period of time specified in the panel's decision. The panel is empowered to utilize whatever administrative procedures it deems necessary to ascertain compliance.

§ 269b.620 Action by panel.

In any case where it is found, after a hearing, that the respondent has failed to comply with the final decision and order of the panel, the panel shall be empowered to take whatever action may be appropriate and shall expect the full cooperation of the Board of Governors of the Federal Reserve System in obtaining such compliance. Among the actions that may be taken by the panel against a noncomplying respondent labor organization, after a show cause hearing, may be suspension of that labor organization's checkoff privileges or recognition as exclusive bargaining representative for such period of time as determined by the panel.

GENERAL RULES

§ 269b.710 Rules to be liberally construed.

(a) Whenever the panel finds that unusual circumstances or good cause exist and that strict compliance with the terms of the rules and regulations in this subchapter will work an injustice or unfairness, it shall construe the rules and regulations in this subchapter liberally to prevent injustices and to effectuate the purposes of the policy.

(b) When an act is required or allowed to be done at or within a specified time, the panel may at any time, in its discretion, order the period altered where it shall be manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the policy.

§ 269b.720 Computation of time for filing papers.

In computing any period of time prescribed by or allowed by the panel, the day of the act, event, or default after which the designated period of time begins to run, shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or the applicable local legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. When the period of time prescribed, or allowed, is seven days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computations. When the rules and regulations in this subchapter require the filing of any paper, such document must be received by the panel or the officer or agent designated by it to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of the time that may have been granted.

§ 269b.730 Number of copies; form.

Except as otherwise provided in the regulations in this subchapter, any documents or papers shall be filed with four copies in addition to the original. All matters filed shall be printed, typed, or otherwise legibly duplicated; carbon copies of typewritten matter will be accepted if they are clearly legible.

§ 269b.731 Signature.

The original of each document filed shall be signed by the party or by an attorney or representative of record for the party, or by an officer of the party and shall contain the address and telephone number of the person signing it.

§ 269b.740 Service of pleading and other paper; statement of service.

(a) *Method of service.* Notices of hearings, decisions, orders, and other papers may be served personally or by registered or certified mail or by telegraph.

(b) *Upon whom served.* Unless otherwise provided in the rules and regulations in this subchapter, all papers except complaints, petitions, and papers relating to requests for appearance or production of documents, shall be served upon all counsel of record and upon parties not represented by counsel or by their agents designated by them or by law and upon the panel, or its designated officers or agents, where appropriate. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) *Proof of service.* The party or person serving the papers or process shall submit simultaneously to the panel or its designated representative, or the individual conducting the proceeding, a written statement of such service. Failure to file a statement of service shall not affect the validity of the service. Proof of service, except where otherwise provided, shall be required only if subsequent to the receipt of a statement of service a question is raised with respect to proper service.

§ 269b.750 Requests for appearance of witnesses and production of documents.

Parties may request appearance of witnesses and production of documents by filing application therefor, depending upon the stage of the proceedings at which the request is made, with the officer conducting the investigation or hearing, or with the panel. Such application shall name and identify the witnesses or documents sought and shall briefly state the need for such appearance or production. The officer with whom such request is filed shall rule upon each such request and the record of the proceeding shall contain a record of that ruling and the basis therefor. The record shall also contain a statement of reasons for any request for the appearance of witnesses or production of documents initiated by a presiding officer.

SUBCHAPTER B—FEDERAL OPEN MARKET COMMITTEE

PART 270—OPEN MARKET OPERATIONS OF FEDERAL RESERVE BANKS

REGULATIONS RELATING TO OPEN MARKET OPERATIONS OF FEDERAL RESERVE BANKS

Sec.
270.1 Authority.
270.2 Definitions.
270.3 Governing principles.
270.4 Transactions in obligations.

AUTHORITY: Sec. 8, 48 Stat. 168, as amended; 12 U.S.C. 263.

SOURCE: 38 FR 2753, Jan. 30, 1973, unless otherwise noted.

REGULATIONS RELATING TO OPEN MARKET OPERATIONS OF FEDERAL RESERVE BANKS

§ 270.1 Authority.

This part is issued by the Federal Open Market Committee (the "Committee") pursuant to authority conferred upon it by sections 12A and 14 of the Federal Reserve Act (12 U.S.C. 263, 355).

§ 270.2 Definitions.

(a) The term "obligations" means Government securities, U.S. agency securities, bankers' acceptances, bills of exchange, cable transfers, bonds, notes, warrants, debentures, and other obligations that Federal Reserve banks are authorized by law to purchase and sell.

(b) The term "Government securities" means direct obligations of the United States (i.e., U.S. bonds, notes, certificates of indebtedness, and Treasury bills) and obligations fully guaranteed as to principal and interest by the United States.

(c) The term "U.S. agency securities" means obligations that are direct obligations of, or are fully guaranteed as to principal and interest by, any agency of the United States.

(d) The term "System Open Market Account" means the obligations acquired pursuant to authorizations and directives issued by the Committee and held on behalf of all Federal Reserve banks.

§ 270.3 Governing principles.

As required by section 12A of the Federal Reserve Act, the time, character, and volume of all purchases and sales of obligations in the open market by Federal Reserve banks are governed with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.

§ 270.4 Transactions in obligations.

(a) Each Federal Reserve bank shall engage in open market operations under section 14 of the Federal Reserve Act only in accordance with this part and with the authorizations and directives issued by the Committee from time to time, and no Reserve bank shall decline to engage in open market operations as directed by the Committee.

(b) Transactions for the System Open Market Account shall be executed by a Federal Reserve bank selected by the Committee. The participations of the several Federal Reserve banks in such account and in the profits and losses on transactions for the account shall be allocated in accordance with principles determined by the Committee from time to time.

(c) In accordance with such limitations, terms, and conditions as are prescribed by law and in authorizations and directives issued by the Committee, the Reserve bank selected by the Committee is authorized and directed—

(1) To buy and sell Government securities and U.S. agency securities in the open market for the System Open Market Account, and to exchange maturing securities with the issuer;

(2) To buy and sell banker's acceptances in the open market for its own account;

(3) To buy Government securities, U.S. agency securities, and banker's acceptances of the kinds described above, under agreements for repurchase of such obligations, in the open market for its own account; and

(4) To buy and sell foreign currencies in the form of cable transfers in

the open market for the System Open Market Account and to maintain for such account reciprocal currency arrangements with foreign banks among those designated by the Board of Governors of the Federal Reserve System under § 214.5 of this chapter (Regulation N).

(d) The Federal Reserve banks are authorized and directed to engage in such other operations as the Committee may from time to time determine to be reasonably necessary to the effective conduct of open market operations and the effectuation of open market policies.

[38 FR 2753, Jan. 30, 1973, as amended at 39 FR 11873, Apr. 1, 1974; 48 FR 32336, July 15, 1983]

PART 271—RULES REGARDING AVAILABILITY OF INFORMATION

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271.6 Information not disclosed.
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AUTHORITY: 5 U.S.C. 552.

§ 271.1 Authority.

This part is issued by the Federal Open Market Committee (the "Committee") pursuant to the requirement of section 552 of Title 5 of the United States Code that every agency shall publish in the FEDERAL REGISTER for the guidance of the public descriptions of the established places at which, the officers from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

[32 FR 9518, July 1, 1967, as amended at 38 FR 2754, Jan. 30, 1973]

§ 271.2 Definitions.

(a) *"Information of the Committee".* For purposes of this part, the term 'information of the Committee" means all information coming into the possession of the Committee or of any member thereof or of any officer, employee, or agent of the Committee, the Board, or any Federal Reserve bank, in the performance of duties for, or pursuant to the direction of, the Committee.

(b) *"Records of the Committee".* For purposes of this part, the term "records of the Committee" means rules, statements, opinions, orders, memoranda, letters, reports, accounts, and other papers containing information of the Committee that constitute a part of the Committee's official files.

[32 FR 9518, July 1, 1967, as amended at 38 FR 2754, Jan. 30, 1973]

§ 271.3 Published information.

(a) *Federal Register.* To the extent required by sections 552 and 553 of Title 5 of the United States Code, and subject to the provisions of §§ 271.5 and 271.6, the Committee publishes in the FEDERAL REGISTER, in addition to this part,

(1) A description of its organization;

(2) Statements of the general course and method by which its functions are channeled and determined;

(3) Rules of procedure;

(4) Substantive rules of general applicability, and statements of general policy and interpretations of general applicability formulated and adopted by the Committee;

(5) Every amendment, revision, or repeal of the foregoing; and

(6) General notices of proposed rule making.

(b) *Policy record.* In accordance with section 10 of the Federal Reserve Act (12 U.S.C. 247a), each annual report made to Congress by the Board includes a complete record of the actions taken by the Committee during the preceding year upon all matters of policy relating to open market operations, showing the votes taken and the reasons underlying such actions.

(c) *Other published information.* From time to time, other information relating to open market operations of the Federal Reserve Banks is published in the Federal Reserve Bulletin, issued monthly by the Board, in such Board's annual report to Congress, and in announcements and statements released to the press. Copies of issues of the Bulletin and of annual reports of the Board may be obtained upon request.

[32 FR 9518, July 1, 1967, as amended at 38 FR 2754, Jan. 30, 1973]

§ 271.4 Records available to the public on request.

(a) *Records available.* Records of the Committee are made available to any person, upon request, for inspection or copying in accordance with the provisions of this section and subject to the limitations stated in §§ 271.5 and 271.6. Records falling within the exemptions from disclosure set forth in section 552(b) of Title 5 of the United States Code and in § 271.6 may nevertheless be made available in accordance with this section to the fullest extent consistent, in the Committee's judgment, with the effective performance of the Committee's statutory responsibilities and with the avoidance of injury to a public or private interest intended to be protected by such exemptions.

(b) *Place and time.* In general, the records of the Committee are held in the custody of the Board, but certain of such records, or copies thereof, are held in the custody of one or more of the Federal Reserve Banks. Any such records subject to this section will be made available for inspection or copying during regular business hours at the offices of the Board in the Federal Reserve Building, 20th and Constitution Avenue, Washington, D.C. 20551, or, in certain instances as provided in paragraph (c) of this section, at the offices of one or more designated Federal Reserve Banks.

(c) *Obtaining access to records.* Any person requesting access to records of the Committee shall submit such request in writing to the Secretary of the Committee. In any case in which the records requested, or copies thereof, are available at a Federal Reserve Bank, the Secretary of the Committee may so advise the person requesting access to the records. Every request for access to records of the Committee shall state the full name and address of the person requesting them and shall describe such records in a manner reasonably sufficient to permit their identification without undue difficulty. The Secretary of the Committee shall determine within ten working days after receipt of a request for access to records of the Committee whether to comply with such request; and he shall immediately notify the requesting party of his decision, of the reasons therefor, and of the right of the requesting party to appeal to the Committee any refusal to make available the requested records of the Committee.

(d) *Appeal of denial of access to records of the Committee.* Any person who is denied access to the records of the Committee, properly requested in accordance with paragraph (c) of this section, may file, with the Secretary of the Committee, within ten days of notification of such denial, a written request for review of such denial. The Committee, or such member or members of the Committee may designate (pursuant to § 272.4(c) of its Rules of Procedure) shall make a determination with respect to any such appeal within 20 working days of its receipt, and shall immediately notify the appealing party of the decision on the appeal and of the right to seek court review of any decision which upholds, in whole or in part, the refusal of the Secretary of the Committee to make available the requested records.

(e) *Extension of time requirements in unusual circumstances.* In unusual circumstances as provided in 5 U.S.C. 552(a)(6)(b), the time limitation imposed upon the Secretary of the Committee or the Committee or its designated representative(s) in paragraphs (c) and (d) of this section may be extended by written notice to the requesting party for a period of time not to exceed a total of ten working days.

(f) *Fee schedule.* A person requesting access to or copies of particular records shall pay the costs of searching and copying such records at the rate of $10 per hour for searching and 10 cents per standard page for copying. With respect to information obtainable only by processing through a computer or other information systems program, a person requesting such information shall pay a fee not to exceed the direct and reasonable cost of retrieval and production of the information requested. Detailed schedules of such charges are available upon request from the Secretary of the Committee. Documents may be furnished without charge or at a reduced charge where the Secretary of the Committee or such person as he may designate determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public, or where total charges are less than $2.

[32 FR 9518, July 1, 1967, as amended at 38 FR 2754, Jan. 30, 1973; 40 FR 7897, Feb. 24, 1975]

§ 271.5 Deferment of availability of certain information.

(a) *Deferred availability of information.* In some instances, certain types of information of the Committee are not published in the FEDERAL REGISTER or made available for public inspection or copying until after such period of time as the Committee may determine to be reasonably necessary to avoid the effects described in paragraph (b) of this section or as may otherwise be necessary to prevent impairment of the effective discharge of the Committee's statutory responsibilities.

(b) *Reasons for deferment of availability.* Publication of, or access to, certain information of the Committee may be deferred because earlier disclosure of such information would:

(1) Interfere with the orderly execution of policies adopted by the Committee in the performance of its statutory functions;

(2) Permit speculators and others to gain unfair profits or to obtain unfair advantages by speculative trading in securities, foreign exchange, or otherwise;

(3) Result in unnecessary or unwarranted disturbances in the securities market;

(4) Make open market operations more costly;

(5) Interfere with the orderly execution of the objectives or policies of other Government agencies concerned with domestic or foreign economic or fiscal matters; or

(6) Interfere with, or impair the effectiveness of, financial transactions with foreign banks, bankers, or countries that may influence the flow of gold and of dollar balances to or from foreign countries.

[32 FR 9518, July 1, 1967, as amended at 40 FR 13204, Mar. 25, 1975; 41 FR 22261, June 2, 1976]

§ 271.6 Information not disclosed.

Except as may be authorized by the Committee, information of the Committee that is not available to the public through other sources will not be published or made available for inspection, examination, or copying by any person if such information:

(a) Is specifically exempted from disclosure by statute (other than section 552b of Title 5, United States Code), provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld; or is specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy and is in fact properly classified pursuant to such executive order;

(b) Relates solely to internal personnel rules or practices or other internal practices of the Committee;

(c) Relates to trade secrets or commercial or financial information obtained from any person and privileged or confidential;

(d) Is contained in interagency or intraagency memoranda or letters, including records of deliberations and discussions at meetings of the Committee and reports and documents filed by members or staff of the Committee that would not be routinely available to a private party in litigation with the Committee;

(e) Is contained in personnel, medical, or similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(f) Is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

Except as provided by or pursuant to this part, no person shall disclose, or permit the disclosure of, any information of the Committee to any person, whether by giving out or furnishing such information or copy thereof, by allowing any person to inspect, examine, or reproduce such information or copy thereof, or by any other means, whether the information is located at the offices of the Board, any Federal Reserve bank, or elsewhere, unless such disclosure is required in the performance of duties for, or pursuant to the direction of, the Committee.

[32 FR 9518, July 1, 1967, as amended at 38 FR 2754, Jan. 30, 1973; 42 FR 13299, Mar. 10, 1977]

§ 271.7 Subpoenas.

(a) *Advice by person served.* If any person, whether or not an officer or employee of the Committee, of the Board of Governors of the Federal Reserve System, or of a Federal Reserve Bank, has information of the Committee that may not be disclosed by reason of § 271.5 or § 271.6 and in connection therewith is served with a subpoena, order, or other process requiring his personal attendance as a witness or the production of documents or information upon any proceeding, he should promptly inform the Secretary of the Committee of such service and of all relevant facts, including the documents and information requested and any facts that may be of assistance in determining whether such documents or information should be made available; and he should take action at the appropriate time to inform the court or tribunal that issued the process, and the attorney for the party at whose instance the process was issued, if known, of the substance of this part.

(b) *Appearance by person served.* Except as disclosure of the relevant information is authorized pursuant to this part, any person who has information of the Committee and is required to respond to a subpoena or other legal process shall attend at the time and place therein mentioned and decline to disclose such information or give any testimony with respect thereto, basing his refusal upon this part. If, notwithstanding, the court or other body orders the disclosure of such information, or the giving of such testimony, the person having such information of the Committee shall continue to decline to disclose such information and shall promptly report the facts to the Committee for such action as the Committee may deem appropriate.

[32 FR 9518, July 1, 1967, as amended at 38 FR 2754, Jan. 30, 1973]

PART 272—RULES OF PROCEDURE

Sec.
272.1 Authority.
272.2 Functions of the Committee.
272.3 Meetings.
272.4 Committee actions.
272.5 Notice and public procedure.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 38 FR 2754, Jan. 30, 1973, unless otherwise noted.

§ 272.1 Authority.

This part is issued by the Federal Open Market Committee (the Committee) pursuant to the requirement of section 552 of title 5 of the United States Code that every agency shall publish in the FEDERAL REGISTER its rules of procedure.

§ 272.2 Functions of the Committee.

The procedures followed by the Committee are designed to facilitate the effective performance of the Committee's statutory functions with respect to the regulation and direction of open market operations conducted by the Federal Reserve banks and with respect to certain direct transactions between the Reserve banks and the United States. In determining the policies to be followed in such operations, the Committee considers information regarding business and credit conditions and domestic and international economic and financial developments, and other pertinent information gathered and submitted by its staff and the staffs of the Board of Governors of the Federal Reserve System (the Board) and the Federal Reserve banks. Against the background of such information, the Committee takes actions from time-to-time to regulate and direct the open market operations of the Reserve banks. Such policy actions ordinarily are taken through the adoption and transmission to the Federal Reserve banks of regulations, authorizations, and directives.

§ 272.3 Meetings.

(a) *Place and frequency.* The Committee meets in Washington, D.C., at least four times each year and oftener if deemed necessary. Meetings are held upon the call of the Chairman of the Board or at the request of any three members of the Committee. Notices of calls by the Chairman of the Board to other members are given by the Secretary of the Committee in writing or by telegram. Requests of any three members for the calling of a meeting shall state the time therefor and shall be filed in writing or by telegram with the Secretary who shall forthwith notify all members of the Committee in writing or by telegram. When the Secretary has sent notices to all members of the Committee that a meeting has been requested by three members and of the time therefor, a meeting is deemed to have been called. If, in the judgment of the Chairman, circumstances require that a meeting be called at such short notice that one or more members cannot be present in Washington, such members may participate in the meeting by telephone conference arrangements.

(b) *Alternates.* Whenever any member of the Committee representing Federal Reserve banks shall find that he will be unable to attend a meeting of the Committee, he shall promptly notify his alternate and the Secretary of the Committee in writing or by telegram, and upon receipt of such notice the alternate shall advise the Secretary whether he will attend such meeting.

(c) *Quorum.* Seven members (including alternates present and acting in the absence of members) constitute a quorum for the transaction of business; but less than a quorum may adjourn from time to time until a quorum is in attendance.

(d) *Attendance at meetings.* Attendance at Committee meetings is restricted to members and alternate members of the Committee, the Presidents of Federal Reserve Banks who are not at the time members or alternates, staff officers of the Committee, the Managers, and such other advisers as the Committee may invite from time to time.

(e) *Meeting agendas.* The Secretary, in consultation with the Chairman, prepares an agenda of matters to be discussed at each meeting and the Secretary transmits the agenda to the members of the Committee within a reasonable time in advance of such meeting. In general, the agendas include approval of minutes of actions; reports by the Managers on open market operations since the previous meeting, and ratification by the Committee of such operations; reports by Economists on, and Committee discussion of, the economic and financial situation and outlook; Committee discussion of monetary policy and action with respect thereto; and such other matters as may be considered necessary.

[38 FR 2754, Jan. 30, 1973, as amended at 44 FR 52823, Sept. 11, 1979]

§ 272.4 Committee actions.

(a) *Actions at meetings.* Actions are taken at meetings of the Committee except as described below.

(b) *Actions between meetings.* Special circumstances may make it desirable in the public interest for Committee members to consider an action to modify an outstanding Committee authorization or directive at a time when it is not feasible to call a meeting. Whenever, in the judgment of the Chairman, such circumstances have arisen, the relevant information and recommendations for action are transmitted to the members by the Secretary, and the members communicate their votes to the Secretary. If the action is approved by a majority of the members, advice to that effect is promptly given by the Secretary to the members of the Committee and to the Reserve bank selected to execute transactions for the System Open Market Account. All communications of recommended actions and votes under this paragraph shall be in writing or by telegram; provided that, in exceptional cases when that is not feasible, such communications may be made orally, either in person or by telephone, and the Secretary shall cause a written record to be made without delay. An action taken between meetings has the force and effect of an action at a meeting: *Provided, however,* That if a meeting is held before the execution of any operations pursuant to the action, the action is null and void unless it is ratified and confirmed by the Committee at such meeting.

(c) *Delegations of authority.* In special circumstances, the Committee may delegate authority to take an action, subject to such instructions or guidelines as the Committee deems proper. Such delegations of authority may be made to the Chairman; to a subcommittee consisting of the Chairman and the Vice Chairman of the Committee and the Vice Chairman of the Board (or in the absence of the Chairman or of the Vice Chairman of the Board the members of the Board designated by the Chairman as alternates, and in the absence of the Vice Chairman of the Committee his alternate); or to any other member or members of the Committee. An action taken pursuant to such a delegation of authority has the force and effect of an action taken by the Committee.

(d) *Effective date.* Committee action ordinarily is made effective as of the time it is taken because the nature of the subject matter and the action taken is such that the public interest and the proper discharge of the Committee's responsibilities so require. Occasionally, however, the Committee may specify that an action is to be effective at some different time.

§ 272.5 Notice and public procedure.

There ordinarily is no published notice of proposed action by the Committee or public procedure thereon, as described in section 553 of title 5 of the United States Code, because such notice and procedure are impracticable, unnecessary, or contrary to the public interest.

PART 281—STATEMENTS OF POLICY

Sec.

281.1 Purchase of Treasury bills.
281.2 Policy regarding the Government in the Sunshine Act.

§ 281.1 Purchase of Treasury bills.

The Federal Open Market Committee of the Federal Reserve System has directed the Federal Reserve Banks to terminate the policy of buying all Treasury bills offered to them at a fixed rate of ⅜ per cent per annum and to terminate the repurchase option privilege on Treasury bills. The new policy will apply to bills issued on or after July 10, 1947. Existing policy will continue to apply to bills issued prior to that date.

(Sec. 12A, 48 Stat. 168, as amended; 12 U.S.C. 263)

[12 FR 4543, July 10, 1947]

§ 281.2 Policy regarding the Government in the Sunshine Act.

On September 13, 1976, there was enacted into law the Government in the Sunshine Act, Pub. L. No. 94-409, 90 Stat. 1241 ("Sunshine Act"), established for the purpose of providing the public with the "fullest practicable information regarding the decisionmaking processes of the Federal Government * * * while protecting the rights of individuals and the ability of the Government to carry out its responsibilities."[1] The Sunshine Act applies only to those Federal agencies that are defined in section 552(e) of Title 5 of the United States Code and "headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency."[2]

The Federal Open Market Committee ("FOMC") is a separate and independent statutory body within the Federal Reserve System. In no respect is it an agent or "subdivision" of the Board of Governors of the Federal Reserve System ("Board of Governors"). It was originally established by the Banking Act of 1933 and restructured in its present form by the Banking Act of 1935 and subsequent legislation in 1942 (generally see 12 U.S.C. 263(a)). The FOMC's membership is composed of the seven members of the Board of Governors and five representatives of the Federal Reserve Banks who are selected annually in accordance with the procedures set forth in Section 12A of the Federal Reserve Act, 12 U.S.C. 263(a). Members of the Board of Governors serve in an ex officio capacity on the FOMC by reason of their appointment as Members of the Board of Governors, not as a result of an appointment "to such position" (the FOMC) by the President. Representatives of the Reserve Banks serve on the FOMC not as a result of an appointment "to such position" by the President, but rather by virtue of their positions with the Reserve Banks and their selection pursuant to Section 12A of the Federal Reserve Act. It is clear therefore that the FOMC does not fall within the scope of an "agency" or "subdivision" as defined in the Sunshine Act and consequently is not subject to the provisions of that Act.

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[1] Government in the Sunshine Act, Pub. L. 94-409, sec. 2, 90 Stat. 1241 (1976).

[2] Government in the Sunshine Act, Pub. L. 94-409, sec. 3(a), 90 Stat. 1241 (1976).

As explained below, the Act would not require the FOMC to hold its meetings in open session even if the FOMC were covered by the Act. However, despite the conclusion reached that the Sunshine Act does not apply to the FOMC, the FOMC has determined that its procedures and timing of public disclosure already are conducted in accordance with the spirit of the Sunshine Act, as that Act would apply to deliberations of the nature engaged in by the FOMC.

In the foregoing regard, the FOMC has noted that while the Act calls generally for open meetings of multi-member Federal agencies, 10 specific exemptions from the open meeting requirement are provided to assure the ability of the Government to carry out its responsibilities. Among the exemptions provided is that which authorizes any agency operating under the Act to conduct closed meetings where the subject of a meeting involves information "the premature disclosure of which would—in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to lead to significant financial speculation in currencies, securities, or commodities."[3]

As to meetings closed under such exemption, the Act requires the maintenance of either a transcript, electronic recording or minutes and sets forth specified, detailed requirements as to the contents and timing of disclosure of certain portions or all of such minutes. The Act permits the withholding from the public of the minutes where disclosure would be likely to produce adverse consequences of the nature described in the relevant exemptions.

The FOMC has reviewed the agenda of its monthly meetings for the past three years and has determined that all such meetings could have been closed pursuant to the exemption dealing with finanical speculation or other exemptions set forth in the Sunshine Act. The FOMC has further determined that virtually all of its substantive deliberations could have been preserved pursuant to the Act's minutes requirements and that such minutes could similarly have been protected against premature disclosure under the provisions of the Act.

The FOMC's deliberations are currently reported by means of a document entitled "Record of Policy Actions" which is released to the public approximately one month after the meeting to which it relates. The Record of Policy Actions complies with the Act's minutes requirements in that it contains a full and accurate report of all matters of policy discussed and views presented, clearly sets forth all policy actions taken by the FOMC and the reasons therefor, and includes the votes by individual members on each policy action. The timing of release of the Record of Policy Actions is fully consistent with the Act's provisions assuring against premature release of any item of discussion in an agency's minutes that contains information of a sensitive financial nature. In fact, by releasing the comprehensive Record of Policy Actions to the public approximately a month after each meeting, the FOMC exceeds the publication requirements that would be mandated by the letter of the Sunshine Act.

Recognizing the Congressional purpose underlying the enactment of the Sunshine Act, the FOMC has determined to continue its current practice and timing of public disclosures in the conviction that its operations thus conducted are consistent with the intent and spirit of the Sunshine Act.

(Pub. L. 94-409, 90 Stat. 1241-1242)

[42 FR 13300, Mar. 10, 1977]

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[3] Government in the Sunshine Act, Pub. L. 94-409, sec. 3(a), 90 Stat. 1242 (1976).

SUBCHAPTER C—FEDERAL RESERVE SYSTEM LABOR RELATIONS PANEL

PARTS 290-299 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefit Programs	29, XXV
Public Contracts	41, 50

Agency	CFR Title, Subtitle or Chapter
Secretary of Labor, Office of	29, Subtitle A
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Low-Income Housing, Department of Housing and Urban Development	24, VIII
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 48, 18
National Archives and Records Administration	36, XII
National Bureau of Standards	15, II
National Capital Planning Commission	1, IV
National Commission on Libraries and Information Science	45, XVII
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II, III; 49, V
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	45, VI; 48,25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI
Neighborhood Reinvestment Corporation	24, XXV
Nuclear Regulatory Commission	10, I
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Overseas Private Investment Corporation	22, VII
Packers and Stockyards Administration	9, II
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XXVI
Pension and Welfare Benefit Programs, Department of Labor	29, XXV
Personnel Management, Office of	5, I; 45, VIII
Postal Rate Commission	39, III

Agency	CFR Title, Subtitle or Chapter
Postal Service, United States	**39, I**
Postsecondary Education, Office of	**34, VI**
President's Commission on White House Fellowships	**1, IV**
Presidential Documents	**3**
Prisons, Bureau of	**28, V**
Productivity, Technology and Innovation, Assistant Secretary (Commerce)	**37, IV**
Property Management Regulations System, Federal	**41, Subtitle C**
Public Contracts, Department of Labor	**41, 50**
Public Health Service	**42, I**
Railroad Retirement Board	**20, II**
Railway Association, United States	**49, IX**
Reclamation Bureau	**43, I**
Refugee Resettlement, Office of	**45, IV**
Regional Action Planning Commissions	**13, V**
Research and Special Programs Administration	**49, I**
Rural Electrification Administration	**7, XVII**
Rural Telephone Bank	**7, XVI**
Saint Elizabeths Hospital	**42, III**
Saint Lawrence Seaway Development Corporation	**33, IV**
Science and Technology Policy, Office of	**32, XXIV**
Science and Technology Policy, Office of, and National Security Council	**47, II**
Secret Service	**31, IV**
Securities and Exchange Commission	**17, II**
Selective Service System	**32, XVI**
Small Business Administration	**13, I; 48, 22**
Smithsonian Institution	**36, V**
Social Security Administration	**20, III; 45, IV**
Soil Conservation Service	**7, VI**
Solar Energy and Energy Conservation Bank, Department of HUD	**24, X**
Soldiers' and Airmen's Home, United States	**5, XI**
Special Education and Rehabilitative Services, Office of	**34, III**
Special Representative for Trade Negotiations, Office of	**15, XX**
State Department	**22, I**
Surface Mining and Reclamation Appeals, Board of	**30,III**
Susquehanna River Basin Commission	**18, VIII**
Tennessee Valley Authority	**18, XIII**
Trade Representative, United States, Office of	**15, XX**
Transportation, Department of	**44, IV**
Coast Guard	**33, I; 46, I, III; 49, IV**
Federal Acquisition Regulation	**48, 12**
Federal Aviation Administration	**14, I**
Federal Highway Administration	**23, I, II; 49, III**
Federal Railroad Administration	**49, II**
Maritime Administration	**46, II**
National Highway Traffic Safety Administration	**23, II, III; 49, V**
Research and Special Programs Administration	**49, I**
Saint Lawrence Seaway Development Corporation	**33, IV**
Secretary of Transportation, Office of	**14, II; 49, Subtitle A**
Urban Mass Transportation Administration	**49, VI**
Travel Service, United States	**15, XII**
Treasury Department	
Alcohol, Tobacco and Firearms, Bureau of	**27, I**
Comptroller of the Currency	**12, I**
Customs Service, United States	**19, I**
Engraving and Printing, Bureau of	**31, VI**
Federal Acquisition Regulation	**48, 10**
Federal Law Enforcement Training Center	**31, VII**
Fiscal Service	**31, II**
Foreign Assets Control, Office of	**31, V**
Internal Revenue Service	**26, I**
Monetary Offices	**31, I**
Secret Service	**31, IV**
Secretary of the Treasury, Office of	**31, Subtitle A**

Agency	CFR Title, Subtitle or Chapter
United States Customs Service	19, I
Truman, Harry S, Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States Information Agency	22, V; 48, 19
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 48, 8
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Welfare-Pension Reports, Office of Labor-Management and	29, IV
Workers' Compensation Programs, Office of	20, I

Redesignation Table I

REGULATION T—PART 220

Part 220 (Regulation T) was revised at 48 FR 23165, May 24, 1983. To facilitate an understanding of the new regulation, this comparison chart published at 48 FR 32978, July 20, 1983, provides a cross-reference of section numbers in the old Regulation T to their corresponding section numbers in the new regulation. This comparison chart set forth below serves as an aid to the user in tracing the regulatory treatment of specific issues addressed in Regulation T.

COMPARISON CHART

Section comparison	
Old with new	
Section	Section
220.1	220.1(a).
220.2	
(a)	220.2 (first sentence).
(b)	220.2(b).
(c)	220.2(c).
(d)	220.2(v).
(e)(1)	220.2(s).
(2)	220.2(s).
(3)	220.17(c).
(4)	220.17(d)
(5)	220.17(e)
(f)	220.2(o)
(g)	Removed
(h)	Removed
(i)	220.2(r)
220.3	
(a)	220.1(b)(1) and 220.4(a)
(b)(1)(i)	220.4(b), (c) (1), (2), and (3)(ii)
(ii)	Removed
(2)	220.4(e).
(3)	Removed (incorporated in 220.4 and 5)
(c)(1)	220.4 (b) and (c)(1).
(2)	220.4(b) and 18
(3)	Removed
(4)	220.3(g).
(d)	220.4(b).
(1)	Removed
(2)	220.3(g) and 4(c).
(3)	220.5(b) and 18(d)
(4)	220.5(a).
(5)	220.5(c).
(6)	Removed
(7)	Partially removed and 220.5 (d) and (e)
(e)	220.4(c)(3) and (d)
(f)	220.4(c)(3)(ii)
(g)(1)	220.4(c) (1) and (2).
(2)	Removed
(3)	220.4(d).
(4)	220.4(c)(4)

Section comparison	
New with old	
Section	Section
220.1	
220.1(a)	220.1.
220.1(b)(1)	220.3(a).
220.1(b)(2)	220.7(e).
220.2	
First sentence	220.2(a).
(a)	Added.
(b)	220.2(b).
(c)	220.2(c).
(d)	Added.
(e)	Do.
(f)	Do.
(g)	Do.
(h)	Do.
(i)	Do.
(j)	220.4(g)(2)(iv).
(k)	220.4(g)(2)(v).
(l)	Added.
(m)	Do.
(n)	Do.
(o)	220.2(f).
(p)	Added.
(q)	Do.
(r)	220.2(i).
(s)	220.2(e)(1), (2).
(t)	220.4(g)(2)(iii).
(u)(1)	Added.
(u)(2)	220.6(k).
(v)	220.2(d)
(w)	Added.
(x)	220.4(g)(2)(i).
(y)	220.4(g)(2)(ii).
220.3	
(a)	220.4(a) (2) and 3(a).
(b)	220.3(a) and 4(a)(3).
(c)	220.7(b).
(d)	220.6(c).
(e)	220.6(f).
(f)	220.6(e).

COMPARISON CHART—Continued

Section comparison		Section comparison	
Old with new		New with old	
Section	Section	Section	Section
(5)	220.5(b)(2)	(g)	220.3(c)(4).
(h)(1)	220.5(a)	(h)	220.6(j).
(2)	Removed	(i)	220.7(f).
(i)(1)	220.5(c)(3), 18 (c), (g), (h) and (i) (with modification)	*220.4*	
(i) to (vi)	220.5(c)(3) (i) to (vi)	220.4(a)	220.3(a).
(2)	220.5(c)(4)(iii)	(1)	Added.
(3)	220.5(c)(4)(i)	(ii)	Do.
(4)	220.5(c)(5)	(iii)	Do.
(5)	220.5(c)(6)	(b)	220.3 (a), (b), (c), (d).
(6)	220.5(c)(6)	(c)(1)	220.3 (b), (c), (d), (g).
		(2)	220.3 (b), (c), (d), (g).
220.4		(3)	220.3(b)(1), (f).
		(4)	220.3(g)(4).
(a)(1)	220.1(b)(1)	(d)	220.3(e), (g)(3).
(2)	220.3(a) , (b) and 12(a)	(e)(1)	220.3(b)(2).
(3)	220.3(b)	(2)	220.3(b)(2).
(4)	Removed	(3)	220.6(g)(2).
(b)	220.10(a)	(f)(1)	220.6(g).
(1)	220.10(a)(1)	(2)	220.6(g)(2).
(2)	220.10(a) (1) and (2)		
(c)(1)	220.8(a)	*220.5*	
(i)	220.8(a)(1)	(a)(1)	220.3(h).
(ii)	220.8(a)(2)	(2)	220.3(h).
(2)	220.8(b)(1)(i) and (4)	(b)(1)	220.3(d)(3).
(3)	220.8(b)(1) (ii), (iii) and (iv)	(2)	220.3(d)(3).
(4)	220.8(b)(3)	(c)(1)	220.4(i) (certain features added).
(5)	220.8(b)(2)	(2)	220.3(i)(1).
(6)	220.8(d)	(3) (i) to (vi)	220.3(i)(1) (i) to (vi).
(7)	Partially removed (incorporated in 220.8(b)(1), (1)(iv)(A), (2), (3), (4), (c)(1), and (2)).	(4)(i)	220.3(i)(3).
		(ii)	220.3(i)(2).
		(5)	220.3(i)(4).
(8)	220.8 (c), (d)	(6)	220.3(i) (5) and (6).
(d)	220.7	(d)	220.6(a).
(e)	220.9(a)(1)	(e)	220.6(b).
(f)(1)	220.11(a)(4)(i)	(f)(1)	220.6(d)(1).
(2)(i)	220.11(a)(3)	(2)	220.6(d)(2).
(ii)	220.11(a)(4)(ii)		
(a)	220.11(a)(4)(ii)(A)	*220.6*	220.4(f)(6).
(b)	220.11(a)(4)(ii)(B) (with modification)		
(iii)	220.11(b)	220.7	
(3)	220.11(a)(1)	220.7(1)	220.4(d)(1).
(4)	220.12(e)	(2)	220.4(d)(2).
(5)	220.12(c)		
(6)	Removed (transaction is permitted in 220.8)	*220.8*	
		220.8(a)(1)	220.4(c)(1)(i).
(7)	220.9(a)(2)	(2)	220.4(c)(1)(ii).
(8)	220.9(a)(3) and (b)	(3)	Added.
(g)(1)	220.12(b)(1)	(4)(i)	Do.
(2)(i)	220.2(x)	(ii)	Do.
(ii)	220.2(y)	(b)(1)(i)	220.4(c)(2).
(iii)	220.2(t)	(ii)	220.4(c)(3).
(iv)	220.2(j)	(iii)	220.4(c)(3).
(v)	220.2(k)	(iv)	220.4(c)(3).
(3)	220.12(b)(2)	(2)	220.4(c)(5).
(i) to (vi)	220.12(b)(2) (i) to (vi)	(3)	220.4(c)(4).
(4)(i)	220.12(b)(3)(i) and (ii)	(4)	220.4(c)(2), (7).
(ii)	220.12(b)(3)(i) (with modification)	(c)(1)	220.4(c)(6).
(iii)	220.12(b)(3)(iii)	(2)	220.4(c)(6), (f)(5).
(5)(i)	220.12(b)(3)(i)	(d) (1) and (2)	220.4(c)(6), (8).
(ii)	220.12(b)(3)(i) (with modification)		

Comparison Chart—Continued

Section comparison		Section comparison	
Old with new		New with old	
Section	Section	Section	Section
(iii)	220.12(b)(3)(iii)	*220.9*	
(6)	220.12(b)(4) (with modification)	(a)(1)	220.4(e).
(7)	220.12(b)(6)	(a)(2)	220.4(f)(7).
(8)	220.12(b)(5)	(a)(3)	220.4(f)(8).
(h)	Removed	(b)	220.7(c).
(i)	Removed (incorporated in 220.4 and 5(b)(1))	*220.10*	220.4(b).
(j)	Removed (incorporated in 220.4)		
(k)	Removed	*220.11*	
		(a)(1)	220.4(f)(3).
220.5		(a)(2)	Added.
(a)	220.14(a)	(a)(3)	220.4(f)(2)(i).
(b)	220.14(b)	(a)(4)(i)	220.4(f)(1).
(c)	220.14(a)(3)	(a)(4)(ii)	220.4(f)(2)(ii).
		(b)	220.4(f)(2)(iii).
220.6		*220.12*	
(a)	220.5(d)	(a)	Added.
(b)	220.5(e)	(b)(1)	220.4(g)(1).
(c)	220.3(d)	(2)	220.4(g)(3).
(d)(1)	220.5(f)(1)	(i) to (vi)	220.4(g)(3) (i) to (vi).
(2)	220.5(f)(2)	(3)(i)	220.4(g)(4)(i), 5(i).
(e)	220.3(f) (1) and (2)	(ii)	Added.
(f)(1)	220.3(e)(1)(i)	(iii)	220.4(g)(4)(iii), 5(iii).
(2)	220.3(e)(1)(ii)	(4)(i)	220.4(g)(6) (with modification).
(3)	220.3(e) (2) and (3)		
(g)(1)	220.4(f)(1)	(ii)	220.4(g)(6).
(2)	220.4(f)(2)	(iii)	220.4(g)(6).
(i)	Removed	(5)	220.4(g)(8).
(ii)	220.4(e)(1) and (f)(2)(i)	(6)	220.4(g)(7).
(iii)	220.4(e)(3) and (f)(2)(ii)	(c)	220.4(f)(5).
(h)	220.16	(d)	Added.
(i)	220.14(a)	(e)	220.4(f)(4).
(j)	220.3(h)		
(k)	220.2(u)(2)	*220.13*	220.7(a).
		(a)	220.7(a)(1).
220.7			
220.7(a)	220.13	(b)	220.7(a)(2).
(1)	220.13(a)		
(2)	220.13(b)	*220.14*	
(b)	220.3(c)	(a)	220.6(i).
(c)	220.9(a)(3) and (b)	(b)	Added.
(d)	220.1(b)(1) and 3(a)		
(e)	220.1(b)(2)	*220.15*	
(f)	220.3(i)	(a)	220.5(a).
		(b)	220.5(b).
220.8			
(a)	220.18 (first sentence)	*220.16*	220.6(h).
(1)	220.18(a)		
(2)	220.18(b)	*220.17*	
(b)	220.18(b)	(a)	220.8(h).
(c)	220.18(a)	(b)	220.8(i).
(d)	220.18(d)	(c)	220.2(e)(3).
(e)	Removed	(d)	220.2(e)(4).
(1)	do	(e)	220.2(e)(5).
(2)	do		
(3)	do	*220.18*	
(4)	do	(a)	220.8(a)(1).
(f)	do	(b)	220.8(a) (2), (b).
(g)(1)	do	(c)	220.8(j)(1).
(2)	do	(d)	220.8(d).
(3)	do	(e)	Added.
(h)	220.17(a)	(f)	220.3(c)(2) (with modifications).
(1)	220.17(a)(3)		
(2)	220.17(a)(1)	(g)(1)	220.8(j)(2).

COMPARISON CHART—Continued

Section comparison		Section comparison	
Old with new		New with old	
Section	Section	Section	Section
(3)	220.17(a)(8)	(g)(2)	220.8(j)(2).
(4)	220.17(a)(9)	(h)	Added.
(5)	220.17(a)(5)	(i)	Do.
(6)	220.17(a)(4)		
(7)	220.17(a)(7)		
(8)	220.17(a)(2)		
(9)	220.17(a)(6)		
(i)	220.17(b)		
(1)	220.17(b)(3)		
(2)	220.17(b)(1)		
(3)	220.17(b)(7)		
(4)	220.17(b)(4)		
(5)	220.14(b)(6)		
(6)	220.17(b)(2)		
(7)	220.17(b)(5)		
(j)(i)	220.18(c)		
(2)(i)	220.18(g)(1)		
(ii)	220.18(g)(2)		

Redesignation Table II

REGULATION U—PART 221

Part 221 (Regulation U) was revised at 48 FR 35076, Aug. 3, 1983. To facilitate an understanding of the new regulation, this comparison chart published at 48 FR 48797, Oct. 21, 1983, provides a cross-reference of section numbers in the old Regulation U to their corresponding section numbers in the new regulation. This comparison chart set forth below serves as an aid to the user in tracing the regulatory treatment of specific issues addressed in Regulation U.

COMPARISON CHART

Comparison of old with new section numbers—	
Old	New
221.1:	
(a)(1)	221.1(b), 221.3(a) and 221.8(b).
(2)	Removed.
(b)	221.3(f) (partially removed).
(c)(1)	Removed.
(2)	Do.
(d)	221.3(d)(1).
221.2:	
First sentence	221.5(a) and 221.6 (first sentence).
(a)	221.6 (a) and (b).
(b)	221.6(e).
(c)	221.5(c)(6) (partially removed).
(d)	221.5(b) and 221.5(c)(8).
(e)	221.5(c)(1).
(f)	221.5(c)(2) and 221.6(f).
(g)	221.5(c)(3) and 221.6(g).
(h)	221.5(c)(4).
(i)	221.6(c).
(j)	221.5(c)(5).
(1)	221.5(c)(5)(i).
(2)	221.5(c)(5)(ii).
(k)	221.5(c)(7).
(l)	221.5(c)(9)(i).
(m)	221.5(c)(9)(ii).
221.3:	
(a)	221.3 (b) and (c) (with modification) and 221.2(f)(2).
(b)(1)	221.2(k).
(2)	221.2(c).
(3)	Removed.
(c)	221.2(g)(1).
(1)	221.2(g)(2)(i).
(2)	221.2(g)(2)(ii).
(3)	221.2(g)(2) (iii) and (iv).
(d)(1)	221.2(j).
(2)	221.2(j).
(3)	221.7(c).
(i)	221.7(c)(1).
(ii)	221.7(c)(2).
(4)	221.7(d).
(5)	221.7(e).
(e)	221.3(h).
(f)(1)	221.3(i) (1) and (2).
(2)	221.3(i) (1) and (3).
(g)	221.3(g) (with modification).
(h)	221.3(k).
(i)	221.3(j).
(j)	Removed.
(k)	221.2 (first sentence) and 221.2(b)(2)(iv).
(l)	Removed.
(m)	221.3(a)(1).
(n)(1)	221.3 (g) and (h).
(2)	Removed.
(3)	221.3(d)(4) and 221.2(f)(1).
(4)	221.3(j), 221.6(h), 221.5(c)(8) and 221.2(f)(2).
(o)	221.5(c)(10) and 221.2(f)(1).
(p)	Removed.
(1)	Removed.
(2)	Removed.
(3)	Removed.
(q)	Removed (see Regulation G, 12 CFR 207).
(r)	221.2(h), 221.3(a) and 221.8(a).
(s)	221.8(b) and 221.2(f)(1).
(t)(1)	221.2(h) and 221.3(a).
(2)	221.3(d)(1) and 221.8(a) (partially removed).
(3)	221.3(a)(2).
(4)	Removed.
(u)	221.3(a)(3).
(v)(1)	221.2(h)(1).
(2)	221.2(h)(2).
(3)	221.2(h)(3).
(4)	221.2(h)(4).
(5)	221.2(h)(5).
(w)	221.5(c)(11) and 221.2(f)(1) (partially removed).
(x)	Removed.
(y)	221.5(c)(12) and 221.2(f)(1) (partially removed).
(z)	221.5(c)(13) and 221.2(f)(1) (partially removed).
221.4:	
(a)	221.8 (a) and (c).
(b)	221.8(e).

COMPARISON CHART—Continued

Comparison of old with new section numbers—	
Old	New
(c)	Removed.
(d)	221.7(a).
(1)	221.7(a)(3).
(2)	221.7(a)(1).
(3)	221.7(a)(8).
(4)	221.7(a)(9).
(5)	221.7(a)(5).
(6)	221.7(a)(4).
(7)	221.7(a)(7).
(8)	221.7(a)(2).
(9)	221.7(a)(6).
(e)	221.7(b).
(1)	221.7(b)(3).
(2)	221.7(b)(1).
(3)	221.7(b)(7).
(4)	221.7(b)(4).
(5)	221.7(b)(6).
(6)	221.7(b)(2).
(7)	221.7(b)(5).
(f)	Removed.

COMPARISON CHART

Comparison of new with old section numbers—	
New	Old
221.1:	
(a)	Added
(b)	221.1(a), 221.3 (r) and (t).
221.2:	
(a)(1)	Added.
(2)	Do.
(3)	Do.
(b)(1)	Do.
(2)(i)	Do.
(ii)	Do.
(iii)	Do.
(iv)	221.3(k)
(c)	221.3(b)(2).
(d)(1)	Added.
(2)	221.1(a) and 221.3(s).
(e)	221.3(a).
(f)(1)	221.3(n)(3) (modified).
(2)	221.3(a).
(g)(1)	221.3(c).
(2)(i)	221.3(c)(1).
(ii)	221.3(c)(2).
(iii)	221.3(c)(3).
(iv)	221.3(c)(3).
(h)(1)	221.3(v)(1).
(2)	221.3(v)(2).
(3)	221.3(v)(3) (i) and (ii).
(4)	221.3(v)(4).
(5)	221.3(v)(5).
(i)	221.4 (a), (b) and 221.3(s).
(j)	221.3(d) (1) and (2).
(k)	221.3(b)(1).
221.3:	
(a)(1)	221.1(a), 221.3(m) and 221.3(s).
(2)	221.3(t) (3) and (4) (modified).
(3)	221.3(u).
(b)	221.3(a).
(c)(i)	Added.
(ii)	Do.
(d)(1)	221.1(d) and 221.3(n)(1).
(2)	221.1(d) and 221.3(n)(1).
(3)	Added.
(4)	221.3(n)(3).
(e)	221.3(n)(1).
(f)(1)	221.1(b).
(i)	221.1(b)(1).
(ii)	221.1(b)(1).
(2)	Added.
(g)	221.3(g).
(h)	221.3(e).
(i)(1)	221.3(f)(2).
(2)	221.3(f)(1).
(3)	221.3(f)(2).
(j)	221.3(i) and 221.3(n)(4).
(k)	221.3(h).
221.4:	
(a)	Added.
(b)	Do.
221.5:	
(a)	221.2 (first sentence).
(b)	221.2(e) (modified).
(c)(1)	221.2(e).
(2)	221.2(f).
(3)	221.2(g).
(4)	221.2(h).
(5)	221.2(j).
(i)	221.2(j)(1).
(ii)	221.2(j)(2).
(6)	221.2(c) (modified).
(7)	221.2(k).
(8)	221.2(d).
(9)(i)	221.2(l).
(ii)	221.2(m).
(10)	221.3(o) (modified).
(11)	221.3(w) (modified).
(12)	221.3(y) (modified).
(13)	221.3(z) (modified).
221.6:	
(a)	221.2(a).
(b)	221.2(a).
(c)	221.2(i).
(d)	Added.
(e)	221.2(b).
(f)	221.2(f).
(g)	221.2(g).
(h)	221.3(n)(4).
221.7:	
(a)	221.4(d).
(1)	221.4(d)(2).
(2)	221.4(d)(8).
(3)	221.4(d)(1).
(4)	221.4(d)(6).
(5)	221.4(d)(5).
(6)	221.4(d)(9).
(7)	221.4(d)(7).
(8)	221.4(d)(3).
(9)	221.4(d)(4).
(b)	221.4(e).
(1)	221.4(e)(2).
(2)	221.4(e)(6).
(3)	221.4(e)(1).
(4)	221.4(e)(4).
(5)	221.4(e)(7).
(6)	221.4(e)(5).
(7)	221.4(e)(3).
(c)	221.4(d)(3).
(1)	221.3(d)(3)(i).
(2)	221.3(d)(3)(ii).
(d)	221.3(d)(4).
(e)	221.3(d)(5).

COMPARISON CHART—Continued

Comparison of new with old section numbers—	
New	Old
221.8:	
(a)	221.4 (a) and (b).
(b)	221.3(s) and 221.1(a).
(c)	221.4(a).

Redesignation Table III

REGULATION X—PART 224

Part 224 (Regulation X) was revised at 48 FR 56572, Dec. 22, 1983, effective January 23, 1984. To facilitate an understanding of the new regulation, this comparison chart, published at 48 FR 57107, Dec. 28, 1983, provides a cross-reference of section numbers in the old Regulation X to their corresponding section numbers in the new regulation and vice versa. The following chart serves as an aid to the user in tracing the regulatory treatment of specific issues addressed in Regulation X.

COMPARISON CHART

Old	New
224.1:	
First part	224.1 (a) and (b) (first sentence).
(a)	224.1 (a) and (b) (first sentence).
(b)	224.1 (a), (b) (first sentence), 2 (a) and (c).
224.2:	
(a)	224.1 (b)(1) and 3(b) (with modification).
(1)	224.1 (b)(1) and 3(b) (with modification).
(2)	224.1 (b)(1) and 3(b) (with modification).
(3)	224.1 (b)(1) and 3(b) (with modification).
(b)(1)	224.3(a) (first sentence).
(i)	224.3 (a)(3).
(ii)	224.3 (a)(1) (with modification).
(iii)	224.3 (a)(2).
(iv)	224.3 (a)(3).
(2)	Deleted.
(3)	Deleted.
224.3:	
First sentence	224.1 (b).
(a)	224.1 (b)(2) (with modification).
(b)	Deleted.
(c)	224.1 (b)(3).
224.4	Deleted.
224.5:	
Opening sentences	224.2 (opening sentences).
(a)	Deleted.
(b)	Deleted.
(c)	Deleted.
(d)	Deleted.
(e)	Deleted.
(f)	Deleted.
(1)	Deleted.
(2)	Deleted.
(3)	Deleted.
(g)	Deleted.
(h)	Deleted.
(i)	Deleted.
(j)	Deleted.
(1)	Deleted.
(2)	Deleted.
(3)	Deleted.
(4)	Deleted.
(k)	Deleted.
(l)	Deleted.
224.6:	
(a)	224.1(b) (1) and 3(c).
(b)	Deleted.

New	Old
224.1:	
(a)	224.1 (first part), (a) and (b).
(b)	224.1 (first part), (a) and (b).
(1)	Added.
(2)	224.3 (a) (modified).
(3)	224.3 (c).
224.2:	
Opening sentences	224.5 (opening sentences).
(a)	Added.
(b)	Added.
(c)	Added.
224.3:	
(a)	224.2 (b)(1).
(1)	224.2 (b)(1)(ii) (modified).
(2)	224.2 (b)(1)(iii).
(3)	224.2 (b)(1) (i) and (iv).
(b)	224.2 (a) (modified).
(c)	224.6 (a).

Redesignation Table IV

REGULATION Z—PART 226

Part 226, Truth in Lending (Reg. Z.) published at 34 FR 2002, February 11, 1969, as amended, contained provisions relating to truth in lending and consumer leasing and was effective until October 1, 1982. At 46 FR 20892 and 20951, April 7, 1981, Part 226 was revised and a new Part 213, Consumer Leasing (Reg. M.) was added, both effective April 1, 1981. However, optional compliance with the revised and added regulations was provided for until October 1, 1982 and declared mandatory thereafter. (See 47 FR 756, Jan. 7, 1982).

In the redesignation table set out below, the "New section" column lists those provisions that treat the same subject matter as the old regulatory provisions, whether or not the substance of the rule is the same. Reference to a provision as "deleted" does not necessarily mean that the rule has changed; the old provision may be preserved in the commentary to the new regulation, or it may appear in Regulation M (Consumer Leasing, 12 CFR Part 213), in which case the Regulation M section(s) is listed.

Old section	New section
§ 226.1 AUTHORITY, SCOPE, PURPOSE, ETC.	
1(a)	1 (a), (b), and (c); 213.1 (a) and (b)
1(b)	1(e); 213.1(c)
1(c)	1(e); 213.1(c)
1(d)(1)	Appendix C; 213.1(d)(2)
(d)(2)	Deleted
(d)(3)	Appendix C; 213.1(d) (1) and (3)
(d)(4)	Deleted
§ 226.2 DEFINITIONS AND RULES OF CONSTRUCTION	
2(a)	Footnote 21
2(b)	2(a)(1); 213.2(a)(1)
2(c)	Footnote 23
2(d)	2(a)(2); 213.2(a)(2)
2(e)	Deleted; 213.2(a)(3)
2(f)	18(b)
2(g)	14(a) and 22(a)
2(h)	2(a)(3); 213.2(a)(4)
2(i)	2(a)(4)
2(j)	13(a)
2(k)	2(a)(5); 213.2(a)(5)
2(l)	2(a)(7)
2(m)	2(a)(8)
2(n)	2(a)(9)
2(o)	Deleted
2(p)	2(a)(12)
2(q)	2(a)(14)
2(r)	2(a)(15)
2(s)	2(a)(17)
2(t)	2(a)(16)
2(u)	2(a)(11)
2(v)	2(a)(19)
2(w)	4(a)
2(x)	2(a)(20)
2(y)	2(a)(22); 213.2(a)(9)
2(z)	2(a)(21); 213.2(a)(10)
2(aa)	2(a)(21)
2(bb)	2(a)(22); 213.2(a)(11)
2(cc)	13(b)
2(dd)	Deleted; 213.2(a)(13)
2(ee)	2(a)(24)
2(ff)	Deleted
2(gg)	2(a)(25); 213.2(a)(15)
2(hh)	2(a)(26); 213.2(a)(16)
2(ii)	Footnote 22
2(jj)	2(b)(2); 213.2(b)(1)
2(kk)	2(a)(13); 213.2(b)(2)
2(ll)	Deleted; 213.2(b)(3)
2(mm)	Deleted; 213.2(a)(6)
2(nn)	Deleted; 213.2(a)(7)
2(oo)	Deleted; 213.2(a)(8)
2(pp)	Deleted; 213.2(a)(12)
2(qq)	Deleted; 213.2(a)(14)
2(rr)	Deleted; 213.2(a)(17)
2(ss)	Deleted; 213.2(a)(18)
2(tt)	Deleted
2(uu)	Deleted
2(vv)	Deleted
§ 226.3 EXEMPTED TRANSACTIONS	
3(a)	3(a)
3(b)	3(d)
3(c)	3(b)
3(d)	3(c)
3(e)	3(a)
3(f)	Deleted; 213.3

§ 226.4 Determination of Finance Charge

Old section	New section
4(a)	4 (a) and (b)
4(b)	4(e)
4(c)	4(c)(2)
4(d)	4(c)(3)
4(e)	4(c)(7)
4(f)	4(f)
4(g)	17(c)(5)
4(h)	Deleted
4(i)	4(c)(8)

§ 226.5 Determination of Annual Percentage Rate

Old section	New section
5(a)	14 (a) and (b)
(a)(1)	14(c)(1)
(a)(2)	Deleted
(a)(3)	14(c)(2) and 14(d)
5(b)(1)	22(a)
(b)(2)	22(b)
(b)(3)	22(c)
(b)(4)	22(d)
(b)(5)	17(c)(4)
5(c)	Footnote 45a

§ 226.6 General Disclosure Requirements

Old section	New section
6(a)	5(a) and 17(a); 213.4(a) (1) and (4)
6(b)	28 and Appendix A; 213.7 and Appendix B
6(c)	Deleted; 213.4(b)
6(d)	5(d) and 17(d); 213.4(c)
6(e)	5(d) and 17(d); 213.4(c)
6(f)	5(c) and 17(c) (1) and (2); 213.4(d)
6(g)	5(e) and 17(e); 213.4(e)
6(h)	Deleted
6(i)	25; 213.6
6(j)	17(i)(3); 213.4(f)
6(k)	Deleted

§ 226.7 Open-End Credit Accounts—Specific Disclosures

Old section	New section
7(a) (introduction)	5(a)(1) and (b)(1)
7(a)(1)	6(a) (introduction) and (a)(1)
(a)(2)	6(a)(3)
(a)(3)	6(a)(4)
(a)(4)	6(a)(2)
(a)(5)	Deleted
(a)(6)	6(b)
(a)(7)	6(c)
(a)(8)	Deleted
(a)(9)	6(d) and Appendix G
7(b)(1)	5(a)(1) and (b)(2)(i)
(b)(1)(i)	7(a)
(b)(1)(ii)	7(b)
(b)(1)(iii)	7(c)
(b)(1)(iv)	7(f)
(b)(1)(v)	7(d)
(b)(1)(vi)	7(g)
(b)(1)(vii)	Deleted
(b)(1)(viii)	7(e)
(b)(1)(ix)	7 (i) and (j)
(b)(1)(x)	7(k)
(b)(2)	5(b)(2)(ii) and footnote 10
7(c)	Deleted
7(d)(1)–(4)	9(a)(1) and Appendix G
(d)(5)	9(a)(2) and Appendix G
7(e)	9(d)
7(f)	9(c)
7(g)	10
7(h)	11
7(i)	Deleted
7(j)	9(b)
7(k)(1)	8(a)(1)
(k)(2)(i)	8(a)(2)
(k)(2)(ii)	8(a)(3)
(k)(3)	8(b)
(k) (4) and (5)	Footnote 16
(k)(6)(i)	Deleted
(k)(6)(ii)	Footnote 19
(k)(6)(iii)	Deleted
(k)(7)	Deleted

§ 226.8 Credit Other Than Open-End—Specific Disclosures

Old section	New section
8(a)	17 (a) and (b)
8(b)(1)	Deleted
(b)(2)	18(e) and footnote 42
(b)(3)	18 (g) and (h); 17(i)
(b)(4)	18(l)
(b)(5)	18(m)
(b)(6)	18(k)(1)
(b)(7)	18(k)(2)
(b)(8)	18(f)
8(c)(1)	Deleted
(c)(2)	18(j)
(c)(3)	Deleted
(c)(4)	Deleted
(c)(5)	Deleted
(c)(6)	18(c)(1)
(c)(7)	18(b)
(c)(8)	18(d)
8(d)(1)	18(b)
(d)(2)	18(c)(1)
(d)(3)	18(d) and 17(i)
8(e)(1)	18(c)
(e)(2)	18(r)
8(f)	Deleted
8(g)	17(g)
8(h)	17(h)
8(i)	17(c)(6)
8(j)	20(a)
8(k)	20(b)
8(l)	Deleted
8(m)	Deleted
8(n)	Deleted
8(o)	Deleted
8(p)	Deleted
8(q)	2(a)(17)
8(r)	17(c)(4)
8(s)	17(c)(3)

§ 226.9 Right to Rescind Certain Transactions

Old section	New section
9(a)	15(a) and 23(a)
9(b)	15(b), 23(b), and Appendices F and G
9(c)	15(c) and 23(c)
9(d)	15(d) and 23(d)
9(e)	15(e) and 23(e)
9(f)	15(a)(4), 23(a)(4), 15(e), and 23(e)
9(g)(1)	15(f)(1) and 23(f)(1)
(g)(2)	15(f)(1) and 23(f)(1)
(g)(3)	Deleted
(g)(4)	Deleted
(g)(5)	15(f)(2) and 23(f)(3)
9(h)	15(a)(3) and 23(a)(3)

Redesignation Table

Old section	New section
§ 226.10 ADVERTISING CREDIT AND LEASE TERMS	
10(a)(1)	16(a) and 24(a)
(a)(2)	Deleted; 213.5(a)
10(b)	16(c) and 24(d); 213.5(b)
10(c)	16(b)
10(d)(1)	24(b)
(d)(2)	24(c)
10(e)	Deleted
10(f)	Deleted
10(g)	Deleted; 213.5(c)
10(h)	Deleted; 213.5(d)
§ 226.11 COMPARATIVE INDEX OF CREDIT COST FOR OPEN-END CREDIT	
All paragraphs	Deleted
§ 226.12 EXEMPTION OF CERTAIN STATE REGULATED TRANSACTIONS	
12(a)	29(a); 213.8(a)
12(b)	Appendix B; 213.8(b) and Appendix A
12(c)	29(b); 213.8(c)
12(d)	Deleted
§ 226.13 CREDIT CARD TRANSACTIONS—SPECIAL REQUIREMENTS	
13(a)	12(a)
13(b)(1)	12(b)(2)
(b)(2)	12(b)(1)
(b)(3)	12(b)
(b)(4)	Deleted
13(c)	12(b)(2)(iii)
13(d)	12(b)(2)(ii) and Appendix G
13(e)	12(b)(3)
13(f)	Deleted
13(g)	12(b)(4)
13(h)	12(b)(5)
13(i)	12(c)
13(j)	12(d)
13(k)	12(e)
13(l)	12(f)
§ 226.14 BILLING ERRORS—RESOLUTION PROCEDURE	
14(a) (introduction)	Footnote 26
(a)(1)	13(c)(1)
(a)(2) (introduction)	13(c)(2)
(a)(2)(i)	13(e)
(a)(2)(ii)	13 (f), (h), and footnote 31
(a)(2)(iii)	13 (f) and (h)
14(b)(1)	Footnote 27 and 13(d)(1)
(b)(2)	13(e)(1) and (a)
(b)(3)	13(g) (1) and (2)
(b) (4) and (5)	Footnote 30
14(c)	13(d)(1)
14(d)	Footnote 27
14(e)(1)	13(d)(2) and (g)(3)
(e)(2)	13(g)(4)
(e)(3)	Deleted
14(f)	Deleted
14(g)	Deleted
§ 226.15 CONSUMER LEASING	
15(a)	Deleted; 213.4(a) (1), (2), and (3)
15(b)	Deleted; 213.4(g)
15(c)	Deleted; 213.4(h)

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

1973

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201.3 Redesignated as 201.4 and revised	9077
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(d) amended	20066, 23513
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